

United States
Circuit Court of Appeals

For the Ninth Circuit.

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CLALLAM COUNTY, WASHINGTON, WILLIAM A. NELSON, Sheriff of Clallam County, Washington, E. C. STEWART, Treasurer of Clallam County, Washington, and J. O. MORSE, Assessor of Clallam County, Washington,

Appellants,

vs.

THE UNITED STATES OF AMERICA, and UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

FILED

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CLERK.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*Page-number appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 294—E.

UNITED STATES OF AMERICA and UNITED
STATES SPRUCE PRODUCTION COR-
PORATION, a Corporation,
Plaintiffs,

vs.

CLALLAM COUNTY, WASHINGTON, WILL-
IAM A. NELSON, Sheriff of Clallam
County, Washington, E. S. STEWART,
Treasurer of Clallam County, Washington,
and J. O. MORSE, Assessor of Clallam
County, Washington,
Defendants.

Complaint.

Plaintiffs for cause of suit allege:

I.

This is a suit arising under the laws of the United States, and the plaintiff, United States Spruce Production Corporation, is a corporation organized under and pursuant to certain Acts of Congress, under the laws of the state of Washington, and a citizen of that state.

The defendant, Clallam County, is a duly organized and acting municipal corporation of the State of Washington, and the defendant, William A. Nelson, is a duly elected and acting sheriff of

Clallam County, Washington, and the defendant, E. S. Stewart, is the duly elected and acting treasurer of Clallam County, Washington, and the defendant, J. O. Morse, is the duly elected and acting assessor of Clallam County, Washington. The matter in dispute herein exceeds the sum of three thousand dollars, exclusive of interest and costs, and the United States of America [2] joins in order to protect its interest.

II.

During the times herein mentioned, the plaintiff, United States Spruce Production Corporation, was and now is a corporation created under the laws of the State of Washington by the Director of Aircraft Production under and pursuant to the Act of Congress of July 9, 1918, amending the act of April 11, 1918 (U. S. Comp. Stat. 1919, Compact Edition Appendix, page 1771), for the purposes hereinafter more fully set forth, and the plaintiff prior to the filing of this complaint was duly licensed and authorized to transact business in the State of Washington and had in all respects complied with the laws of that state entitling it to transact business in that state.

III.

Under and pursuant to the laws of the United States, particularly the Act of Congress of June 3, 1916 (Chapter 134, 39 Stat. 166, at p. 213, sec. 120), the Act of Congress of March 4, 1917 (Chapter 180, 39 Stat. 1192), and the Act of Congress of July 24, 1917 (Chapter 40, Stat., p. 243, 1917, sec. 9), and other enactments, the President of the

United States authorized the purchase and acquisition of spruce and fir lumber among other commodities, as war material, and authorized the construction of aircraft for use in the navy and in the army of the United States, within the amount of appropriations and in compliance with the terms of the said acts. Through the War Department and under the direction of the Chief Signal Officer of the United States Army, plans were made for the production of such war material, including the building of the railway hereinafter mentioned. [3]

IV.

By the above-mentioned act approved July 24, 1917, authority was given to the President acting through the War Department during the existing emergency occasioned by the state of war between the United States and the Central European Powers for the purchase, manufacture, maintenance, repair and operation of airships, and other aerial machines, including the acquisition and development of plants, factories and establishments for the manufacture of airplanes, aircraft, machines and appurtenances, the purchase of raw and semi-finished materials therefor, and of all other things necessary for creating and extending the production of airplanes, aircraft, engines and all other appurtenances, and the sum of six hundred and forty million dollars (\$640,000,000.00) was appropriated for the purpose of carrying the said act into effect. Under the provisions of the Act of Congress approved March 4, 1917, being sections 3115-1/16a, 3115-1/16b, 3115-1/16c and 3115-1/16d

of the United States Compiled Statutes, Compact Edition, the President was authorized and empowered within the limits of funds appropriated therefor, to requisition for the use of the Government during the war emergency, war materials and plants for the production of "War Materials," which included arms, armament, ammunition, stores, supplies and equipment for ships and airplanes and everything required for or in connection with the production thereof, and was authorized to exercise the power and authority so vested in him and to expend the money appropriated by means of and through such agency or agencies, as he might determine upon from time to time. By the Act of Congress approved April 11, 1918, as amended by the Act of Congress approved July 9, 1918, the Secretary of War was authorized to acquire [4] by condemnation lands and interests in lands for military purposes, including standing or fallen timber, sawmills, camps, machinery, logging roads, rights of way, equipment, materials and supplies and any works, property or appliances suitable for the effectual production of such lumber and timber products. The said last-mentioned act further provided that when the owners of such land, interest and rights appurtenant thereto should fix a price for the same which in the opinion of the Secretary of War, would be reasonable, he might purchase or enter into a contract for the use of the same at such price, without further delay.

V.

Accordingly, the Government of the United

States in the existing war emergency, under the direction of the President and Secretary of War, being in need of spruce, fir and other lumber for the manufacture and production of such war material, especially aircraft, and in order to facilitate the production of such lumber products, undertook the construction of certain logging railroads in the States of Washington and Oregon for the transportation of such lumber products as would be required in the manufacture of aircraft and for other purposes. These operations were originally begun by the Signal Corps, Aviation Section of the United States Army, and later by the Bureau of Aircraft Production, Spruce Production Division of the United States War Department, these being the agencies through which the powers vested in the President of the United States and the Secretary of War under the foregoing Acts of Congress were exercised. Among other logging railroads so constructed is the logging railroad hereinafter described, known as Spruce Production Railroad No. 1 in Clallam County in the State of Washington, and among other property or rights acquired was the property hereinafter described.

[5]

VI.

For the purposes aforesaid and under the said acts of Congress, the United States, acting through the Signal Corps of the United States Army, entered into a contract with Siems, Carey-H. S. Kerbaugh Corporation for the construction of the railroad hereinafter described and for the acquisition

of the rights of way therefor. Nearly all of the right of way and lands acquired for that railroad and nearly all the property and rights herein described were acquired through the last-named corporation, and that corporation also performed the work or nearly all of the work of constructing the said logging railroad. Afterwards, however, all of these properties were transferred to the plaintiff, United States Spruce Production Corporation, as hereinafter more particularly shown, and additional rights of way were acquired by said plaintiff and additional work was done upon said railway line by it. The said railroad was constructed upon a route located and designated by the United States Government and the said railway line with its rights of way and appurtenances as built and constructed was built for and with all other property and rights herein described was acquired by and became the property of the United States, although the title thereto was transferred to the plaintiff corporation and still is carried in the name of said plaintiff for convenience.

VII.

The following is a description of the property which is the subject of this suit, and which was acquired in the name of plaintiff, United States Spruce Production Corporation, for the use and benefit of the United States Government, all of said property being located in the county of Clallam, State of Washington, to wit: [6]

(a) That certain logging railroad known as "Spruce Production Railroad No. 1," as the same

is now staked out, located, established and/or constructed over and across the following described parcels of real property:

The northeast quarter (NE. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$), the southeast quarter (SE. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$) and the southwest quarter (SW. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$) of Section thirty-six (36), township thirty-one (31) north, range nine (9) west, Willamette Meridian.

The southeast quarter (SE. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), the northeast quarter (NE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the northwest quarter (NW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the northeast quarter (NE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$), the northwest quarter (NW. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$), the southwest quarter (SW. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) and the southeast quarter (SE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$), Section thirty-five (35), Township thirty-one (31) north, range nine (9) west.

The southeast quarter (SE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$) of section thirty-four (34), Township thirty-one (31) north, range nine (9) west, Willamette Meridian.

Lots one (1) and two (2), the southwest quarter (SW. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), the southeast quarter (SE. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$), the northeast quarter (NE. $\frac{1}{4}$) of the southwest quarter

(SW. $\frac{1}{4}$), and the southeast quarter (SE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) of Section three (3), Township thirty (30) north, range nine (9) west, Willamette Meridian.

The northeast quarter (NE. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$), the southeast quarter (SE. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$), the northeast quarter (NE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$), the southeast quarter (SE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$), and the southwest quarter (SW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$) of Section ten (10), Township thirty (30) north, range nine (9) west, Willamette Meridian.

The northwest quarter (NW. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), the northeast quarter (NW. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$) and the southeast quarter (SE. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), of Section fifteen (15), Township thirty (30) north, range nine (9) west, Willamette Meridian.

Lots four (4), five (5) and six (6), lots one (1) to eleven inclusive of Frank Anderson's Subdivision of a portion of Government lot seven (7), and the unplatted portion of lot seven (7), lots one (1) to fourteen (14), inclusive of Idlewild Subdivision of Government lot eight (8), all in [7] section fourteen (14), township thirty (30) north, range nine (9) west, Willamette Meridian.

Lot one (1), lots one (1) to twenty-six (26), inclusive of Sunrise Beach Subdivision of Gov-

ernment lots two (2) and three (3), and a portion of lot four (4), an unplatted portion of lot four (4), and lot five (5), section twenty-three (23), township thirty (30) north, range nine (9) west, Willamette Meridian.

Lots one (1), two (2) and three (3), the southwest quarter (SW. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$) and lot four (4), section twenty-six (26), township thirty (30) north, range nine (9) west, Willamette Meridian.

Lot one (1), the southeast quarter (SE. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$) and lots two (2), three (3), four (4) and five (5), section twenty-seven (27), township thirty (30) north, range nine (9) west, Willamette Meridian.

Lot one (1), lots one (1) to forty-eight (48), inclusive, and lots fifty-one (51) to fifty-six (56) inclusive of Sunshine Cove Subdivision of Government lots two (2) and three (3), and lot four (4), all in section twenty-eight (28), township thirty (30) north, range nine (9) west. Willamette Meridian.

Lots one (1), two (2), three (3) and four (4), the southwest quarter (SW. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$) and lot five (5), section twenty-nine (29), township thirty (30) north, range nine (9) west, Willamette Meridian.

Lot sixteen (16), the southeast quarter (SE. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), lots fifteen (15), fourteen (14), one (1) and two (2), lots one (1) to twenty-three (23) in-

clusive, of Elmer Day's Subdivision of Government lots twelve (12) and thirteen (13), and lots three (3), eleven (11), four (4), five (5) and six (6), all in Section thirty (30), township thirty (30) north, range nine (9) west, Willamette Meridian.

Lots twenty-seven (27), twenty-six (26) and twenty-five (25), section nineteen (19), township thirty (30) north, range nine (9) west, Willamette Meridian.

The southeast quarter (SE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the southwest quarter (SW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the southeast quarter (SE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$), the southwest quarter (SW. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) and the northwest quarter (NW. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) of section twenty-four (24) township thirty (30) north, range ten (10) west, Willamette Meridian. [8]

The northeast quarter (NE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the northwest quarter (NW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the southwest quarter (SW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the southeast quarter (SE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) and the southwest quarter (SW. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$), Section twenty-three (10) west, Willamette Meridian.

The northwest quarter (NW. $\frac{1}{4}$) of the

The Northwest quarter (NW. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$), Section twenty-

six (26), township thirty (30) north range ten (10) west, Willamette Meridian.

The northeast quarter (NE. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$) the northwest quarter (NW. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), the northeast quarter (NE. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$) and the northwest quarter (NW. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$), Section twenty-seven (27), township thirty (30) north, range ten (10) west, Willamette Meridian.

The northeast quarter (NE. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$) the southeast quarter (SE. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), the southwest quarter (SW. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), the southeast quarter (SE. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$) and the southwest quarter (SW. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$) of section twenty-eight (28) township thirty (30) north, range ten (10) west, Willamette Meridian.

Lots one (1), eight (8), seven (7) and six (6), the northwest quarter (NW. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) and lot five (5), section twenty-nine (29), township thirty (30) north, range ten (10) west, Willamette Meridian.

Lot six (6), the northeast quarter (NE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the northwest quarter (NW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), and lots seven (7) and eight (8),

section thirty (30), township thirty (30) north, range ten (10) west, Willamette Meridian.

Lots nine (9), twelve (12) and eleven (11), and the southwest quarter (SW. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) of section twenty-five (25), township thirty (30) north, range eleven (11) west, Willamette Meridian.

The southeast quarter (SE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the southwest quarter (SW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the southeast quarter (SE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) and lot nine (9), section twenty-six (26) township thirty (30) north, range eleven (11) west, Willamette Meridian.

Lot eleven (11), the southwest quarter (SW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the southeast quarter (SE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) and the southwest [9] quarter (SW. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) of section twenty-seven (27), township thirty (30) north, range eleven (11) west, Willamette Meridian.

Lot five (5) of section twenty-eight (28) township thirty (30) north, range eleven (11) west, Willamette Meridian.

The northeast quarter (NE. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), the northwest quarter (NW. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$) the Northeast quarter (NE. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$) and the northwest quarter (NW. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$) of section thirty-three (33), township

thirty (30) north, range eleven (11) west, Willamette Meridian.

Lot one (1), the southeast quarter (SE. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), the southwest quarter (SW. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), the southeast quarter (SE. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$) and the southwest quarter (SW. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$) of section thirty-two (32), township thirty (30) north, range eleven (11) west, Willamette Meridian.

Lots twelve (12) nine (9), eight (8) and seven (7) section thirty-one (31) township thirty (30) north, range eleven (11) west, Willamette Meridian.

Lots twelve (12) eleven (11), nine (9) and seven (7), section thirty-six (36), township thirty (30) north, range twelve (12) west, Willamette Meridian.

The northeast quarter (NE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the northwest quarter (NW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the northeast quarter (NE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) and lot six (6), section thirty-five (35), township thirty (30) North, range twelve (12) west, Willamette Meridian.

The northeast quarter (NE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$) the northwest quarter (NW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the northeast quarter (NE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) and the northwest quarter (NW. $\frac{1}{4}$) of the southwest quarter

(SW. $\frac{1}{4}$) of section thirty-four (34), township thirty (30) north, range twelve (12) west, Willamette Meridian.

The northeast quarter (NE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the northwest quarter (NW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$) lot eight (8), the northeast quarter (NE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$), the southeast quarter (SE. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$), the southwest quarter (SW. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$) of section thirty-three (33), township thirty (30) north, range twelve (12) west, Willamette Meridian.
[10]

The southeast quarter (SE. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), the southwest quarter (SW. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), the southeast quarter (SE. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$), the southwest quarter (SW. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$) and the northwest quarter (NW. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$) of section thirty-two (32), township thirty (30) north, range twelve (12) west, Willamette Meridian.

The southeast quarter (SE. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), the northeast quarter (NE. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), the northwest quarter (NW. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), and lots seven (7), two (2) and three (3), section thirty-one (31), township thirty (30), north, range twelve (12) west, Willamette Meridian.

Lots ten (10), eleven (11), five (5), seven (7) and six (6), and the southwest quarter (SW. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) of section thirty-six (36), township thirty (30) north, range thirteen (13) west, Willamette Meridian.

The southeast quarter (SE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the southwest quarter (SW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the southeast quarter (SE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$), lot three (3), and the northwest quarter (NW. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) of section thirty-five (35) township thirty (30) north range thirteen (13) west, Willamette Meridian.

The northeast quarter (NE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the southeast quarter (SE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the northwest quarter (NW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$), the southwest quarter (SW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$) and the southeast quarter (SE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) of section thirty-four (34), township thirty (30) north, range thirteen (13) west, Willamette Meridian.

Lots two (2), three (3), four (4) and five (5), section three (3) township twenty-nine (29) north, range thirteen (13) west, Willamette Meridian.

(b) That certain mill site particularly described as follows:

Block eight (8), (except S. P. A. & W. right of way), blocks eight and one-half ($8\frac{1}{2}$) eleven (11), eleven and one-half ($11\frac{1}{2}$) twelve (12) and twelve and one-half ($12\frac{1}{2}$), tide lands of the first class east of Laurel Street, lying in front of the City of Port Angeles. [11]

Blocks eight (8) and eight and one-half ($8\frac{1}{2}$) ten (10) and ten and one-half ($10\frac{1}{2}$), eleven (11) and eleven and one-half ($11\frac{1}{2}$) and twelve (12) and twelve and one-half ($12\frac{1}{2}$) of Norman R. Smith's subdivision of the Government Townsite of Port Angeles.

All Tide Lands of the first class in front of the City of Port Angeles, including two tracts lying in front of the United States Hospital Reserve, as shown upon the supplemental map of First Class Tide Lands on file in the office of the Commissioner of Public Lands at Olympia, Washington.

Suburban Lot numbered one and one-half ($1\frac{1}{2}$) of the Government Townsite of Port Angeles.

A 3.16 acre tract in the southwest (SW.) corner of Suburban Lot one (1) of the Government Townsite of Port Angeles.

Division "A" and Division "B" in front of the said Suburban Lot One (1).

Division "A" and Division "B" in front of the said Suburban Lot one and one-half ($1\frac{1}{2}$).

Blocks two (2) and three (3) and the west 320 feet of block four (4) of Port Angeles Tide

Lands of the First Class in front of Syndicate First Addition to the City of Port Angeles, as shown on the plat thereof on file in the office of the Commissioner of Public lands at Olympia, Washington.

Lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), twenty-three (23), twenty-four (24), twenty-five (25), and twenty-six (26), Block two (2), of Cain's Subdivision of Suburban Lot thirty-six (36) of the Government Townsite of Port Angeles.

Lots one (1) and two (2), Block three (3) of Cain's Subdivision of Suburban Lot thirty-six (36) of the Government Townsite of Port Angeles.

All of Block one (1) of Cain's Subdivision of Suburban Lot thirty-six (36) of the Government Townsite of Port Angeles.

Lot one (1), two (2), three (3), four (4) and five (5) of Block four (4) of Cain's Subdivision of Suburban Lot Thirty-six (36) of the Government Townsite of Port Angeles.

All of Blocks one hundred fifty-two (152), one hundred fifty-three (153), one hundred fifty-four (154), one hundred sixty-four (164), one hundred sixty-five (165) and one hundred sixty-six (166) of Frank Chamber's Subdivision of Suburban Lots thirty-seven (37) and a part of thirty-eight (38) of the Government Townsite of Port Angeles. [12]

The northerly seven (7) acres of Suburban Lot twenty-seven (27) of the Government Townsite of Port Angeles.

The east 4.81 acres of Suburban Lot thirty-eight (38) of the Government Townsite of Port Angeles.

(c) Those certain leasehold interests particularly described as follows:

A leasehold interest in the harbor area abutting upon the Port Angeles Tide Lands, Blocks eight and one-half ($8\frac{1}{2}$), eleven and one-half ($11\frac{1}{2}$) and twelve and one-half ($12\frac{1}{2}$), State Lease No. 110.

A leasehold interest in the harbor area lying in front of an unnumbered tract of Port Angeles tide lands lying on the northerly side of Railroad Avenue between Race street and Block Ten and one-half ($10\frac{1}{2}$) of said Port Angeles Tide Lands, said harbor area being bounded by the inner and outer harbor lines, the east line of Race Street and the west line of said Block ten and one-half ($10\frac{1}{2}$) produced across the harbor area to the outer harbor line:

A leasehold interest in the harbor area lying in front of Block ten (10) and one-half ($10\frac{1}{2}$) Port Angeles Tide Lands and bounded by the inner and outer harbor lines and the side lines of said Block ten and one-half ($10\frac{1}{2}$), both produced across the harbor area to the outer harbor line.

All harbor area lying in front of Division B, Block one and one-half ($1\frac{1}{2}$), and Division B,

Block One (1), east of Ennis Creek Waterway, Port Angeles Tide Lands, and Block one (1), Port Angeles Tide Lands in front of Syndicate First Addition, said harbor area being bounded by the inner and outer harbor lines, the easterly line of Ennie Creek across the harbor area to the outer harbor line.

A leasehold interest in the harbor area lying in front of Blocks Two (2) and Three (3), Port Angeles tide lands in front of Syndicate First Addition, said harbor area being bounded by the inner and the outer harbor lines and the side lines of said Blocks two (2) and three (3), both produced across the harbor area to the outer harbor line.

All as shown on the supplemental map of Port Angeles Tide Lands on File in the office of the Commissioner of Pubic Lands at Olympia, Washington. [13]

(d) Those certain tracts of land with the improvements thereon described as follows:

Lots One (1) Two (2), three (3) and four (4), block three (3) of Cain's Subdivision of Suburban Lot twenty-one (21) of the Government Townsite of Port Angeles, according to the duly recorded plat thereof on file in the records of Clallam County, Washington, and improvements.

(e) All the following described lands and all timber thereon:

Lot three (3);

The northeast quarter (NE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$); the north half (N. $\frac{1}{2}$) of the northeast quarter (NE. $\frac{1}{4}$); and the southwest quarter (SW. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), and the southeast quarter (SE. $\frac{1}{4}$) of the northwest quarter (NE. $\frac{1}{4}$) of section twenty-six (26) township thirty (30) north, range thirteen (13) west, Willamette Meridian.

Lots three (3) and four (4) section twenty-five (25) township thirty (30) north, range thirteen (13) west, Willamette Meridian.

The west half (W. $\frac{1}{2}$) of the southwest quarter (SE. $\frac{1}{4}$) of section sixteen (16), township thirty (30) north, range thirteen (13) west, Willamette Meridian.

Lots five (5), six (6) and seven (7) of section four (4) township thirty (30) north, range thirteen (13) west, Willamette Meridian.

The east half (E. $\frac{1}{2}$) of the southwest quarter (SW. $\frac{1}{4}$) of section twenty (20) township twenty-nine (29) north, range thirteen (13) west, Willamette Meridian.

Lot two (2) and three (3), section nineteen (19) township thirty (30) north, range twelve (12) west, Willamette Meridian.

Lot four (4), section eighteen (18), township thirty (30) north, range twelve (12) west, Willamette Meridian.

The north half (N. $\frac{1}{2}$) of the southwest quarter (SW. $\frac{1}{4}$) of section twelve (12), township twenty-nine (29) north, range thirteen (13) west, Willamette Meridian.

The northeast quarter (NE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$) of section eleven (11), township twenty-nine (29) north, range thirteen (13) west, Willamette Meridian. [14]

(f) All standing timber on the following described lands:

The Northeast quarter (NE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$) and the west half (W. $\frac{1}{2}$) of the southwest quarter (SW. $\frac{1}{4}$) of section twenty-four (24), township thirty (30) north, range thirteen (13) west.

Lot three (3) and the northeast quarter (NE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) of section eighteen (18), township thirty (30) north, range twelve (12) west, Willamette Meridian.

The east half (E. $\frac{1}{2}$) of the southeast quarter (SE. $\frac{1}{4}$) of section thirteen (13), township thirty (30) north, range thirteen (13) west, Willamette Meridian.

(g) All of the following personal property situated in the COUNTY OF CLALLAM AND STATE OF WASHINGTON:

All steel rails, camp cars, lumber and timbers, switches, locomotives, tender and caboose, brick and tile, and all furniture and fixtures standing in the name of the plaintiffs.

VIII.

By the provisions of the Act of Congress approved July 9, 1918, the Director of Aircraft Production of the United States Government was authorized, whenever in his judgment it would

facilitate the production of aircraft, aircraft equipment or material therefor, for the United States and the governments allied with it in the prosecution of the war, to form, under the laws of the District of Columbia or under the laws of any state, one or more corporations for the purchase, production, manufacture and sale of aircraft, aircraft equipment or materials therefor, and to build, own and operate railroads in connection therewith, said Director being further authorized to acquire on behalf of the United States the capital stock and securities of any corporation so formed by him. The provisions of that act further [15] authorized the Secretary of War, acting through the Director of Aircraft Production, to transfer by appropriate instruments to any such corporation as might be formed thereunder, any interest of the United States in any existing contracts for aircraft, aircraft equipment or materials therefor and the title in lands, plants, railroads or equipment used in or in connection with the production of aircraft, aircraft equipment or materials therefor, on such terms as the Secretary of War, acting through the Director of Aircraft Production, should deem fit. Pursuant to the authority of that Act of Congress, the Director of Aircraft Production caused to be formed under the laws of the State of Washington, the Plaintiff corporation known as the United States Spruce Production Corporation. All of the shares of stock of the said corporation were owned and controlled by the Secretary of War and are the property of the

United States and the corporation is and has at all times since its organization been an arm, agency or instrumentality of the United States Government for the purpose of carrying out the objects and purposes of the said aforesaid acts of Congress. No person, firm or individual has any interest, right, title or estate in or to any shares of stock of that corporation, or in or to any property owned or held by that corporation, and all of its functions as a corporation are exercised by a board of directors named by the Government of the United States and under the directions of the War Department of the Government. [16]

IX.

Prior to the filing of this complaint, the Secretary of War, acting through the Director of Aircraft Production, conveyed and transferred to the plaintiff, United States Spruce Production Corporation, the contract with the Siems, Carey-H. S. Kerbaugh Corporation above referred to, and all of the property and rights of way of the said logging railroad, and since that time the additional rights and properties acquired as herein stated were acquired by the plaintiff corporation under the powers and authority as herein described and for the United States Government.

X.

In the manner described the logging railroad herein referred to and generally known as United States Spruce Production Railroad No. 1 was surveyed, located, and constructed and the rights of way hereinbefore described, and all other prop-

erty herein described, both real and personal, were taken possession of by the plaintiff corporation prior to the year 1919.

XI.

None of the property herein described was assessed or included on the assessment-rolls of Clallam County, Washington, for the years 1919 and 1920, at the time said assessment-rolls were made up. However, at the time the assessment-roll for Clallam County, Washington, was made up for the year 1921, the defendants and particularly the defendant, J. O. Morse, Assessor of Clallam County, Washington, caused to be entered upon the [17] assessment-rolls for said county for the years 1919, 1920 and 1921, all of the property herein described, with assessments for the respective years, and against the various parcels as set forth in paragraph VII of this complaint, as follows:

Parcel (a)	Assessed valuation for 1919,	\$368,144.00
	Assessed valuation for 1920,	368,224.00
	Assessed valuation for 1921,	368,669.00
Parcel (b)	Assessed valuation for 1919,	104,415.00
	Assessed valuation for 1920,	104,405.00
	Assessed valuation for 1921,	107,827.00
Parcel (c)	Assessed valuation for 1919,	710.00
	Assessed valuation for 1920,	710.00
	Assessed valuation for 1921,	710.00
Parcel (d)	Assessed valuation for 1919,	10,820.00
	Assessed valuation for 1920,	10,820.00
	Assessed valuation for 1921,	10,820.00

Parcel (e)	Assessed valuation for 1919,	19,155.00
	Assessed valuation for 1920,	19,870.00
	Assessed valuation for 1921,	20,000.00
Parcel (f)	Assessed valuation for 1919,	6,945.00
	Assessed valuation for 1920,	7,160.00
	Assessed valuation for 1921,	7,160.00
Parcel (g)	Assessed valuation for 1919,	51,987.00
	Assessed valuation for 1920,	51,987.00
	Assessed valuation for 1921,	50,912.00

And during the year 1921, the defendants caused to be entered and charged upon the tax records and rolls of Clallam County, Washington, based upon the assessments above set out, taxes as follows:

Parcel (a)	Taxes charged for the year 1919,	14,034.00
	Taxes charged for the year 1920,	15,308.77
	Taxes charged for the year 1921,	16,439.18
Parcel (b)	Taxes charged for the year 1919,	6,746.53
	Taxes charged for the year 1920,	7,791.98
	Taxes charged for the year 1921,	7,156.47

[18]

Parcel (c)	Taxes charged for the year 1919,	41.83
	Taxes charged for the year 1920,	49.17
	Taxes charged for the year 1921,	43.97
Parcel (d)	Taxes charged for the year 1919,	697.89
	Taxes charged for the year 1920,	806.09
	Taxes charged for the year 1921,	719.53
Parcel (e)	Taxes charged for the year 1919,	667.93
	Taxes charged for the year 1920,	775.32
	Taxes charged for the year 1921,	719.35
Parcel (f)	Taxes charged for the year 1919,	229.19
	Taxes charged for the year 1920,	275.66
	Taxes charged for the year 1921,	247.02

Parcel (g) Taxes charged for the year 1919, 2,454.00
Taxes charged for the year 1920, 2,782.70
Taxes charged for the year 1921, 2,539.21

That the total assessed valuation of the property herein described for the years 1919, 1920, and 1921, and the total taxes charged against said property as made and entered by the defendants, is as follows:

1919, Total Assessed Valuation,	\$562,176.00
1919, Total Taxes,	24,871.37
1920, Total Assessed Valuation,	563,176.00
1920, Total Taxes,	27,789.69
1921, Total Assessed Valuation,	566,098.00
1921, Total Taxes,	27,864.73

That the defendants and each of them claim that the said property herein described was and is taxable for the years.1919, 1920, and 1921, and that the said taxes above set out are now due and payable. That proceedings have been taken by the defendants looking toward the collection of said taxes, and the defendants have notified the plaintiff, that they will distrain all the personal property herein described for the collection of the taxes charged against the same, and have threatened and [19] now threaten to proceed with the collection of all said taxes which are charged against the personal property and make sale thereof in the manner provided for by the laws of the State of Washington, and threaten to and unless restrained by this Court, will proceed to attempt the collection of all of said taxes on all of the real and personal property herein described, and have

threatened to and unless restrained will attempt to make sale of said property, and will undertake to collect penalties on account of pretended delinquencies in the payment of such taxes, and will undertake to deliver possession of said property to purchasers at such sales, all to the great and irreparable injury of the United States of America, and to the plaintiff, United States Spruce Production Corporation.

XII.

That the property herein described was not and is not subject to assessment or taxation for the years of 1919, 1920, or 1921, but the same is exempt therefrom and the taxes entered and charged against said real and personal property, and the plaintiff, United States Spruce Production Corporation, are illegal and void for the reason that the property herein described is in truth and in fact the property of the United States of America, held by and through the plaintiff, United States Spruce Production Corporation, as an agency of the United States of America for the purposes herein set out.

XIII.

That the attempted assessment and taxation of the property herein described by the defendants for the years [20] 1919, 1920 and 1921, constitute clouds upon the title thereto, and by reason of said taxes sought to be levied and charged against said property, the defendants are claiming an interest or right or lien therein adverse to the plaintiff, and this suit is brought for the purpose of determining such interest, claim, right or lien.

The defendants threaten to take further steps looking to the collection of said taxes, which will unless restrained lead to a multiplicity of suits for the reason that attempts will be made to sell said property to third persons and to place them in possession of said property, and the title thereto will be further clouded. The plaintiff, United States Spruce Production Corporation, is in possession by itself of all the said property herein described. Pursuant to the operations of the United States, and under the direction of its officers and agents, and through the instrumentality of the plaintiff, United States Spruce Production Corporation, there was expended by the United States more than one million dollars in the construction of a railroad and the acquisition of the real and personal property herein described, and the said railroad and property herein described is owned and held for Government purposes. The said railroad follows a continuous route upon which has been constructed the tracks of the said railway, together with bridges, culverts and necessary appurtenances, and the whole thereof, together with all the other property, both real and personal, herein described, was and is essential to the said Governmental enterprise, and the segregation by sale for taxes of any part of the said railroad or property herein described would practically result in a destruction of the said railroad for the purpose for which [21] it was so constructed, and would result in irreparable loss and injury to the United States of Amer-

ica and to the plaintiff United States Spruce Production Corporation.

XIV.

That plaintiffs have no plain, adequate or speedy remedy at law.

WHEREFORE, plaintiffs pray that a decree be made adjudging that the attempted assessment and taxation of the property herein described is illegal and void, and that said property is not subject to taxation for the years 1919, 1920, or 1921, in the county of Clallam, State of Washington, and that plaintiffs' title to the property herein described be quieted against any taxes heretofore assessed, levied or charged against said property for the said years, and that the assessments and taxes attempted to be made and charged against said property be removed as clouds upon the title of the plaintiffs, that defendants and each of them be perpetually enjoined from assessing or taxing said property in the county of Clallam, State of Washington, or from attempting to collect said or any taxes for the years 1919, 1920 and 1921.

Plaintiffs further pray that pending the hearing of this cause the defendants and each of them may be restrained from in any way interfering with the plaintiffs' possession and rights in the property herein described, or from taking any steps to collect said taxes, and upon final determination of this suit, that a perpetual injunction may be decreed, and that [22] plaintiffs may have and recover

their costs and disbursements herein, and for such other and further relief as may be proper.

CAREY and KERR,
OMAR C. SPENCER,
Attorneys for Plaintiffs

State of Oregon,
County of Multnomah,—ss.

I, Max Church, being first duly sworn, depose and say that I am secretary of the United States Spruce Production Corporation, plaintiff within named; that I have read the foregoing complaint, and the same is true, as I verily believe.

MAX CHURCH.

Subscribed and sworn to before me, this 30th day of March, 1922.

[Seal] OMAR C. SPENCER,
Notary Public for Oregon.

My commission expires October 30, 1923. [23]

State of Oregon,
County of Multnomah,—ss.

Due service of the within complaint is hereby accepted in Multnomah County, Oregon, this — day of —, 1922, by receiving a copy thereof, duly certified to as such by Omar C. Spencer, of attorneys for plaintiffs.

_____,
Attorneys for Defendants.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. April 6, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [24]

In the District Court of the United States, for the
Western District of Washington, Northern
Division.

No. 294—E.

UNITED STATES OF AMERICA and UNITED
STATES SPRUCE PRODUCTION COR-
PORATION, a Corporation,

Plaintiffs,

vs.

CLALLAM COUNTY, WASHINGTON, WILL-
IAM A. NELSON, Sheriff of Clallam County,
Washington, E. S. STEWART, Treasurer of
Clallam County, Washington, and J. O.
MORSE, Assessor of Clallam County, Wash-
ington,

Defendants.

Answer.

Come now the defendants above named and an-
swering plaintiffs' complaint, for answer admits,
deny and allege as follows:

I.

Answering the allegations contained in paragraph
I they specifically deny that this is a suit arising
under the laws of the United States; that the United
States is a proper or necessary party to this suit and
that the plaintiff corporation was organized under
any law of the United States; they admit that
the plaintiff United States Spruce Production
Corporation is a corporation organized under
the laws of the State of Washington, and is a citizen

of the State of Washington. They admit the other allegations set forth in said paragraph.

II.

They admit the allegations contained in paragraph II of the complaint, except they deny that the plaintiff corporation was organized under any law of the United States. [25]

III.

In answering the allegations contained in paragraph III they allege that they have not, nor has any of them, knowledge or information sufficient to form a belief as to the matters and things therein set forth.

IV.

They admit the allegations set forth in paragraph IV of the complaint.

V.

In answering the allegations contained in paragraph V defendants and each of them, allege that they have not knowledge or information sufficient to form a belief as to the matters and things therein set forth.

VI.

Answering the allegations contained in paragraph VI they deny that the property and rights therein mentioned were acquired, by, or became the property of the United States. They admit that the title to all of such property, and all property in controversy herein was acquired by the plaintiff United States Spruce Production Corporation and the title to the same has at all times been and now is in said plaintiff.

Further answering the allegations contained in said paragraph they allege that said defendants have not, nor has any of them, knowledge or information sufficient to form a belief as to the matters and things therein set forth.

VII.

Answering the allegations contained in paragraph VII they admit that the property in controversy herein is correctly set forth and described in said paragraph; that the title to all of the same has at all times been and now is in the plaintiff United States Spruce Production Corporation. Answering [26] the other allegations of said paragraphs defendants allege that they have not, nor has any of them, knowledge or information sufficient to form a belief as to the same.

VIII.

They admit all the allegations, matters and things contained and set forth in paragraph VIII from the beginning of said paragraph to the words "should deem fit" found in line 10 of page 15 of the complaint. Answering the other allegations contained in said paragraphs defendants have not, nor has any of them, knowledge or information sufficient to form a belief as to the same.

IX.

Answering the allegations contained in paragraph IX they admit that the plaintiff United States Spruce Production Corporation acquired and has title to all the property therein referred to. As to the other allegations contained in said paragraph the defendants allege that they have not nor has

any of them, knowledge or information sufficient to form a belief as to the same.

X.

Answering the allegations contained in paragraph X they admit that all the properties therein referred to were taken possession of by the plaintiff corporation prior to the year 1919. As to the other allegations in said paragraph defendants have not, nor has any of them, knowledge or information to form a brief as to the same.

XI.

They admit the allegations contained and set forth in paragraph XI of the complaint except they deny that the matters and things therein complained of will be to the great or irreparable [27] injury of the United States of America or of the United States Spruce Production Corporation.

XII.

Defendants deny the allegations contained and set forth in paragraph XII of the complaint.

XIII.

Answering the allegations contained and set forth in paragraph XIII they deny that the taxation therein complained of would constitute a cloud upon the title to the property; they admit that the defendants by reason of the matters and things alleged are claiming an interest and a right and lien adverse to the plaintiff corporation, and that this suit is brought to determine such interest, right and lien; they admit they *they* intend to take steps to collect said taxes in the manner provided by the laws of the State of Washington; they admit that the plaintiff

corporation is in possession of all of said property. They allege that the defendant have not, nor has any of them, knowledge or information sufficient to form a belief as to what, if any amount has been expended by the United States in the matters therein referred to. They specifically deny that the railroad and property therein referred to is owned by or held for governmental purposes. They admit that said railroad has a continuous route as in said paragraph alleged, but denies that the same, together with its appurtenances was or is essential to any government enterprise. They deny that any results will occur other than what must necessarily follow from the collection of taxes. They deny that there will be irreparable loss or injury to either the United States or to Plaintiff corporation. [28]

FOR A SPECIAL AND AFFIRMATIVE DEFENSE these defendants allege:

That the plaintiff, United States Spruce Production Corporation, is the real plaintiff in interest and is a corporation organized and existing under and by virtue of the laws of the State of Washington, that the United States is neither a proper or necessary party; that this suit does not arise under any law of the United States; and that the defendants are all residents of the State of Washington and that this court has no jurisdiction of this action.

FOR A SECOND AFFIRMATIVE DEFENSE and for ground for dismissal of plaintiffs' complaint, these defendants allege that an inspection of plaintiffs' complaint will show that the same does not state facts sufficient to constitute a valid cause

of action in equity against defendants, or any of them, and therefore said complaint should not be maintained but should be dismissed upon its merits.

WHEREFORE defendants pray that plaintiffs take nothing by their action but that the same be dismissed upon its merits and that they be awarded their costs herein

WILLIAM B. RITCHIE,
F. L. PLUMMER,
ELLIS, FLETCHER & EVANS,
Attorneys for Defendants.

United States of America,
State of Washington,
County of Clallam,—ss.

E. S. Stewart, being first duly sworn, on oath deposes and says: He is one of the defendants named in the within and foregoing answer; that he has read said answer, knows the contents thereof and the same is true. That he verifies the same on behalf of all the defendants herein.

E. S. STEWART.

Subscribed and sworn to before me this 19th day of April, [29] A. D. 1922.

[Seal] FRANK L. PLUMMER,
Notary Public in and for the State of Washington,
Residing at Port Angeles therein.

Copy of foregoing answer received and due service thereof accepted this 21st day of April, 1922.

JOHN A. FRATER,
Asst. United States Attorney.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Apr. 21, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [30]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

IN EQUITY—No. 294—E.

UNITED STATES OF AMERICA and UNITED
STATES SPRUCE PRODUCTION COR-
PORATION, a Corporation,

Plaintiffs,

vs.

CLALLAM COUNTY, WASHINGTON,

Defendants.

Decision.

Filed June 28, 1922.

The bill of complaint alleges in substance, that pursuant to laws of the United States the President authorized the purchase of spruce and fir lumber, etc., as war material, and the construction of aircraft for use in the Army and Navy, under the direction of the Chief Signal Officer of the United States Army, also authorized plans for the production for such war material, including the building of railroads; that, the President was authorized to purchase, manufacture, maintain, and operate aerial machines and the acquisition and development of

plants and factories and establishments for the manufacture of aeroplanes, etc., and for the purpose of carrying into effect such directions and authority, \$640,000,000 was appropriated; that, pursuant to congressional authority the President, in order to facilitate the production of such war material, undertook the construction of certain logging railroads through the agency of the Signal corps, Advance Section of the United States Army, and later, by the Bureau of Aircraft Production, Spruce Production Division of the United States War Department (the agency through which the power thus vested was exercised, and the property in issue acquired); that, pursuant to law acting through some of the agencies named, the United States entered into a contract for the construction of the railroad referred to, and acquisition for rights of way therefor; that, pursuant to the Act of July 9, 1918, as amended, the director of Aircraft Production for the purpose of facilitating aircraft material, etc., production formed under [31] the laws of the State of Washington, the United States Spruce Production Corporation; that, all of the shares of stock of said corporation, were subscribed for and owned and controlled by the Secretary of War, and are the property of the United States; that said corporation since its organization has been an agency or instrumentality of the United States Government for the purpose of carrying out the object and purpose of said act of Congress, and that all the functions of such corporation are exercised by a Board of Directors named by the Gov-

ernment of the United States; that, said property was conveyed to the United States Spruce Production Corporation, and that the said corporation went into possession prior to the year 1919; that, in the year 1921 the defendants caused to be entered upon the tax rolls for defendant county for the years 1919, 1920, and 1921, all the property set out for assessment for the respective years; that, the defendants claim the property is taxable for the said years and that the said taxes are now due and payable, and have taken steps to collect the same. It is then alleged that the said property is exempt from taxes and that such assessment is illegal and void. The defendants have moved to dismiss on the ground that the United States is not a proper or necessary party, and therefore no diversity of citizenship is present. In harmony with the holding of this court in *U. S. vs. Sears, et al.*, not reported, the United States is a proper party. The motion to dismiss is therefore denied. The defendants also take issue with the contention on the merits. Upon the trial the allegations set out in the bill of complaint have been substantially sustained.

THOS. P. REVELLE, U. S. Attorney, JOHN A. FRATER, Asst. U. S. Attorney, and CHARLES H. CAREY, Attorneys for the United States.

ELLIS, FLETCHER & EVANS, W. B. RITCHIE, and T. F. TRUMBULL, Attorneys for the Defendant.

NETERER, D. J.—The railroad in issue was constructed as an instrumentality of the Govern-

ment as a war necessity, and was not engaged in commercial business, or the business of a common carrier; [32] and all the activities of the said corporation since the signing of the Armistice have been with the view of winding up its business. The issue concisely stated is: Was the plaintiff corporation a mere instrumentality of the United States in carrying forward preparations to facilitate the prosecution of the war, or is it a corporate entity which stripped the interest of the United States of Beneficial use within the purview of the taxation inhibitions of the law?

By the National Defense Act, Sec. 3115-1/32A.

“For the purpose of expanding and co-ordinating the industrial activities relating to aircraft, or parts of aircraft, produced for any purpose in the United States, and to facilitate generally the development of air service, a board is hereby created, to be known as the Aircraft Board. * * * ”

Sec. 3115-1/32 B.

“The board shall * * * include a civilian chairman, the Chief Signal Officer of the Army, and two other officers of the Army to be appointed by the Secretary of War. The Chief Constructor of the Navy and two other officers of the Navy to be appointed by the Secretary of the Navy; and two additional civilian members. The Chairman and civilian members shall be appointed by the President by and with the advice and consent of the Senate.”

Sec. 3115-1/32 D.

“The Board is hereby empowered under the direction and control of the * * * Secretary of War to supervise and direct * * * production and manufacture of aircraft. * * * ”

Sec. 3115 1/32 E. The Board is empowered to employ such clerks and employees as may be necessary, and for the purpose of paying the expenses provided by law, \$100,000 of an appropriation made for the Signal Corps of the Army is made available. By Act of June 3, 1916, making further provisions for National Defense, sec. 120, p. 213, Stat. 39, the President in time of War or when war is eminent is empowered through any head of the department of the Government to place with any concern an order for material as may be required, and compliance with such order is made obligatory, and a penalty provided for noncompliance, and by Act Approved March 4, 1917, 39 Stat. p. 1192, \$115,000,000 as may be necessary was made immediately available for expeditious construction of [33] aircraft, etc. By Act of July 24, 1917, Chapter 4, Sec. 9, 40 Stat. 245, authority is given to the President for emergency purchase, manufacture, building, etc., of motor vehicles, aviation stations, roads, etc., through the department, and by Sec. 8, of the Act, all officers and enlisted men of the temporary forces of the Signal Corps including the aviation section are placed in the same footing as to pay, allowance, and pension, as permanent officers and enlisted men of corresponding grades, and length of service in the regular army. By this act (Sec. 1) the Signal corps

and Aviation Section are temporarily increased. Clearly all functions were a public necessity, and for public use, and all property acquired was for such purpose.

At the outset it may be said that the case recently decided by the Supreme Court, *United States Shipping Board Emergency Fleet Corporation vs. Sloan Ship Yard Corporation*, May 1, 1922, has no application. That case had relation to a rule of conduct and responsibility therefor, and held that the agent "does not cease to be answerable for his acts." The issue here is ownership by the United States, or property reserved for public use, and the manner in which it is held would appear to be of little consequence, when the charge against the property is not created by some act of the corporation. Freedom of corporate action or power of control by the Spruce Production Corporation in this case is mere fiction. All of its acts were directed and controlled by the President of the United States through the several departments authorized by the Congress; and the claim is not predicated upon any act of omission or of commission, and the corporation was a mere instrumentality or agency for doing the bidding of the President of the United States. *Chicago Mil. St. P. Ry. Co. vs. Minn. C. Asso.*, 247 U. S. 490, at 97. Courts will not be blinded by the form of law. *Cleveland-Cliffs Iron Co. vs. Arctic Iron Co.* 261 Fed. 15. The Liability asserted is one sought to be imposed by statute, and not one created by contract or tortious act of the corporate entity. The Supreme Court in the *Pine Hill Coal Co. vs.*

U. S. Decided May 29, 1922, said: "Liability in any case is not to be imposed upon a Government without clear words." The contention of the defendants that a tax upon the operation or right to function of the corporation has a necessary effect of impairing [34] the power to serve, and is prohibited; but that a local tax upon the property which does not directly affect its operations to function is not prohibited, unless the exception is expressly declared, I do not think can be obtained here in the sense asserted to the existing facts. The cases cited in support have not application for the reason that the parties in the cited cases were functioning as common carriers or commercial enterprises, and the interest of the Government was an agreement to perform in its behalf and benefit by the parties in emergency of war, or contingency named on demand. Whereas, in the instant case the property is the property of the United States held in the name of the corporation, and has not been used in other than for war purposes. No question of innocent parties can enter, and the court must disregard the corporate form for the purpose of justice to ascertain the right and true relation. *U. S. vs. Beebe*, 127 U. S. 338, at 334. The relation of the United States to the corporation must be determined by the purpose and act creating it, and the uses to which the property is to be devoted. Chief Justice Marshall in the *Dartmouth College Case*, 4 Wheat. (17 U. S.) 518, at 561 said:

"To determine the character of a corporation the beneficial purposes to which the prop-

erty of the corporation is to be used may be considered.

Justice McKenna, for the Court in *McCaskill vs. U. S.* 216 U. S. 504, at 514, said:

“Undoubtedly a corporation is in law a person or entity entirely distinct from its stockholders and officers.”

And on page 515 says:

“A growing tendency is therefore exhibited in the courts to look beyond the corporate form to the purpose of it, and to the officers who are identified with that purpose.”

The object and manner and purpose of organization and operation are conclusively established to be to expedite efficiency in the production of aircraft, etc., material for war purposes, and when it is determined that the property is held for a public purpose the right to exemption applies. Sec. 4, Sub. 2, enabling Act, and Art. 26, of the Constitution of Washington provide:

“That no taxation shall be imposed by the State on land or property therein belonging to, or which may be thereafter purchased by the United States or reserved for use.”

This is conceded to be but declaratory of the rule. In *McCullough vs. Maryland*, 4 Wheat. 416 (17 U. S.), in substance it was held that neither the property of the United States, nor any instrumentality in carrying [35] forward its lawful powers may be taxed by a state, and this rule has not been departed from. In *Page vs. Pierce County*, 25 Wash. 6, the State Supreme Court held that the State may

not tax land in which the United States retains the right of control, and this was not changed in *State vs. Wiles*, 16 Wash. Dec. 297, where the defendant was rendering a service to the United States by carrying mail, for which service he used a truck, of which he was owner. This truck was clearly not within the exemption provision any more than would be all vessels or trains carrying United States mail: The defendant was under contract with the United States. In the instant case the corporation was not under contract to perform for the United States, but the United States was acting in its own behalf through the Spruce Corporation, as a facility to expedite efficiency, and the corporation as an entity did not function in the sense of having freedom of action or power of control.

The issue has been presented with masterful ability, and the research of counsel has, I think, exhausted the subject. An examination of all the cases, the constitutional provisions of the State and the rule conceded applicable to Government property considered, leads to the conclusion that the property is exempt from taxation. No case has been presented, nor have I found one where the property of the Government administered through a corporation in executing a wholly Federal employment is subject to taxation. In the instant case the property itself is also the only means and instrumentality by which the purpose and employment could be carried out, and to tax it would be to destroy it. A review here of the cases cited would

not serve any useful purpose. Decree for the plaintiff.

NETERER,
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. June 20, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [36]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

IN EQUITY—No. 249—E.

UNITED STATES OF AMERICA and UNITED
STATES SPRUCE PRODUCTION COR-
PORATION, a Corporation,

Plaintiffs,

vs.

CLALLAM COUNTY, WASHINGTON, WILL-
IAM A. NELSON, Sheriff of Clallam
County, Washington, E. S. STEWART,
Treasurer of Clallam County, Washington,
and J. O. MORSE, Assessor of Clallam
County, Washington,

Defendants.

Decree.

This cause having heretofore been submitted upon the evidence in behalf of the respective parties and upon argument of counsel and the Court being

advised and having made and filed its written decision it is now,

ORDERED AND DECREED that the attempted assessment and taxation of the property described in the complaint is illegal and void and the said property is not subject to taxation for the years 1919, 1920 and 1921 in the county of Clallam, State of Washington, and that the plaintiff's title to the said property be quieted against any and all taxes heretofore assessed, levied or charged against the said property for the said years, and also that the attempted assessment of taxes against the said property be and is hereby removed as a cloud upon the title of the plaintiffs and also that the defendants and each of them be and are hereby perpetually enjoined from assessing or taxing the said property or from attempting to collect the said or any tax for the said years, and that the plaintiffs have and recover of and from the defendants their costs and disbursements [37] herein. To the entry of this decree the defendants except and exception is noted.

JEREMIAH NETERER,

Judge.

Dated Aug. 18th, 1922.

By agreement of parties time to file and serve bill of exceptions is extended to Oct. 1st, 1922.

Aug. 18, 1922.

JEREMIAH NETERER,

Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. Aug. 18, 1922. F. M. Harshberger,
Clerk. By S. E. Leitch, Deputy. [38]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

IN EQUITY—No. 294—E.

UNITED STATES OF AMERICA and UNITED
STATES SPRUCE PRODUCTION COR-
PORATION, a Corporation,

Plaintiffs,

vs.

CLALLAM COUNTY, WASHINGTON, WILL-
IAM A. NELSON, Sheriff of Clallam
County, Washington, E. S. STEWART,
Treasurer of Clallam County, Washington,
and J. C. MORSE, Assessor of Clallam
County, Washington,

Defendants.

Assignment of Errors.

Now come the defendants in the above-entitled
cause, and file the following assignment of errors
upon which they will rely upon their prosecution
of the appeal in the above-entitled cause, from the
decree made by the United States District Court
for the Western District of Washington, Northern
Division, on the 18th day of August, A. D. 1922.

I.

Said Court erred in refusing to sustain the first

special and affirmative defense contained in the answer to these defendants to the effect that all the real parties to this action, both plaintiff and defendant, are residents of the State of Washington, and that said Court has no jurisdiction of this action.

II.

Said Court erred in refusing to sustain the objection [39] of these defendants to the jurisdiction of said court of this cause interposed by these defendants at the opening of the trial on the ground that the United States is neither a necessary nor a proper party, and that the cause of action does not arise under the constitution nor any law of the United States.

III.

Said Court erred in refusing to sustain the motion of these defendants to dismiss this action, interposed at the close of the trial upon the ground that said Court had no jurisdiction in that the United States is neither a necessary nor a proper party and that the cause of action does not arise under the constitution of the United States nor under any law of the United States, and that this action is a suit between citizens of the same state.

IV.

Said Court erred in entertaining jurisdiction of said cause and in refusing to dismiss said cause on the ground that said court had no jurisdiction to entertain the same.

V.

Said Court erred in refusing to sustain the second

affirmative defense contained in the answer of these defendants to the effect that the plaintiffs' complaint does not state facts sufficient to constitute a valid cause of action in equity against these defendants or any of them.

VI.

Said Court erred in refusing to sustain the motion of these defendants interposed at the close of the trial for the dismissal of this action upon the merits, on the ground that the [40] plaintiffs' complaint does not state facts sufficient to constitute a cause of action, and does not state facts entitling the plaintiff to the relief sought or to any relief whatever.

VII.

Said Court erred in refusing to dismiss this action on the ground that the plaintiffs' complaint does not state any facts sufficient to constitute a valid cause of action in equity against these defendants or either of them.

VIII.

Said Court erred in refusing to sustain the further motion of these defendants interposed at the close of the evidence for the dismissal of this action on the ground that the evidence adduced at the trial fails to show any cause of action and fails to show that the plaintiffs are entitled to the relief sought or to any relief whatever.

IX.

Said Court erred in refusing to dismiss this action on the ground that the evidence adduced at the trial failed to prove any cause of action and

failed to show that the plaintiffs are entitled to the relief sought or to any relief whatever.

X.

Said Court erred in entering a decree granting to plaintiffs any relief whatsoever in this action and in entertaining the decree of August 18, 1922, holding invalid the taxes levied and assessed by Clallam County, Washington, against the property of the plaintiff, United States Spruce Production Corporation, situated in Clallam County, and in enjoining the enforcement and collection of said taxes or any of the same, and in entering any other decree than a decree dismissing [41] this action with costs against the plaintiff.

WHEREFORE the appellants pray that said decree be reversed, and that said District Court for the Western District of Washington, Northern Division, be ordered to enter a decree dismissing this cause on the merits with costs against the plaintiffs.

WM. B. RITCHIE,
T. F. TRUMBULL,
ELLIS, FLETCHER & EVANS,
Attorneys for Appellants.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 10, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [42]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 294—E.

UNITED STATES OF AMERICA and UNITED
STATES SPRUCE PRODUCTION COR-
PORATION, a Corporation,

Plaintiffs,

vs.

CLALLAM COUNTY, WASHINGTON, WILL-
IAM A. NELSON, Sheriff of Clallam
County, Washington, E. S. STEWART,
Treasurer of Clallam County, Washington,
and J. O. MORSE, Assessor of Clallam
County, Washington,

Defendants.

Petition for Appeal.

To the Honorable JEREMIAH NETERER, United
States District Judge, for the Western District
of Washington, Northern Division.

The above-named defendants, feeling themselves
aggrieved by the decree made and entered in this
cause on the 18th day of August, 1922, does hereby
appeal from said decree, to the United States Circuit
Court of Appeals for the Ninth Circuit for the rea-
sons specified in the assignment of errors which is
filed herewith, and said defendants pray that their
appeal be allowed, and that citation issue as provided
by law, and that a transcript of the record, proceed-
ings, and papers upon which said decree was based,

duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, and your petitioners further pray, that the proper Order, touching the security to be required of them to perfect their appeal be made. [43]

Dated at Seattle, Washington, this 10th day of October, A. D. 1922.

WM. B. RITCHIE,
County Attorney,
ELLIS, FLETCHER & EVANS,
T. F. TRUMBULL,
Attorneys for Defendants.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 10, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [44]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 294—E.

UNITED STATES OF AMERICA and UNITED
STATES SPRUCE PRODUCTION COR-
PORATION, a Corporation,

Plaintiffs,

vs.

CLALLAM COUNTY, WASHINGTON, and
WILLIAM A. NELSON, Sheriff of Callam

County, Washington, E. S. STEWART,
Treasurer of Clallam County, Washington,
and J. O. MORSE, Assessor of Clallam
County, Washington,

Defendants.

**Order Allowing Appeal and Fixing Amount
of Bond.**

NOW, on this 10th day of October, 1922, this cause came on to be heard, upon the petition of the defendants, above named, for an appeal herein, and the Court being advised in the premises,—

IT IS ORDERED that the appeal of said petitioners in said matter, to the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby allowed, and that a certified transcript of the record, proceedings, orders, decrees and testimony, and all of the other proceedings in said matter, be transferred to the United States Circuit Court of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED, that the bond on the appeal of the said petitioners be fixed in the sum of five hundred dollars, to cover all damages and costs if the said appellant shall fail to make their appeal good. [45]

Done in open court, this 10th day of October,
A. D. 1922.

JEREMIAH NETERER,
Judge of the United States District Court, Western
District of Washington, Northern Division.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 10, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [46]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 249—E.

UNITED STATES OF AMERICA and UNITED
STATES SPRUCE PRODUCTION COR-
PORATION, a Corporation,

Plaintiffs,

vs.

CLALLAM COUNTY, WASHINGTON, WILL-
IAM A. NELSON, Sheriff of Clallam
County, Washington, E. S. STEWART,
Treasurer of Clallam County, Washington,
and J. O. MORSE, Assessor of Clallam
County, Washington,

Defendants.

Appeal Bond.

KNOW ALL MEN BY THESE PRESENTS,
that we, Clallam County, Washington, William A.
Nelson, sheriff of Clallam County, Washington,
E. S. Stewart, Treasurer of Clallam County, Wash-
ington, and J. O. Morse, Assessor of Clallam

County, Washington, as principals, and United States Fidelity and Guaranty Co., as surety, acknowledge ourselves to be jointly indebted to the United States of America and the United States Spruce Production Corporation, a corporation Appellee, in the above-entitled cause, in the sum of Five Hundred and no/100 (\$500.00) Dollars, conditioned that;

WHEREAS, on the 18th day of August, 1922, in the United States District Court, for the Western District of Washington, Northern Division, in a suit depending in that court, wherein the United States of America and the United States Spruce Production Corporation, a corporation, were plaintiffs, and [47] Clallam County, Washington, William A. Nelson, Sheriff of Clallam County, Washington, E. S. Stewart, Treasurer of Clallam County, Washington, and J. O. Morse, Assessor of Clallam County, Washington, were defendants, numbered 294-E on the Equity Docket of said court, a decree was rendered against the said defendants, and the said defendants have obtained an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and filed a copy thereof in the office of the Clerk of the court, to reverse said decree;

NOW, if the said defendants shall perfect their appeal to effect, and answer all costs if it fails to make their appeal good, then the above obligation

to be void; otherwise to remain in full force and virtue.

CLALLAM COUNTY, WASHINGTON.

By THEO. F. RIXON,

Chairman Board of County Commissioners.

UNITED STATES FIDELITY AND
GUARANTY CO.

[Corporate Seal]

· D. H. McCOLLISTER,
Attorney in Fact,
Surety.

Approved as to form and sufficiency of security,
this 10th day of October, 1922.

JEREMIAH NETERER,

Judge, United States District Court, Western Dis-
trict of Washington, Northern Division. [48]

[Indorsed]: Filed in the United States District
Court, Western District of Washington, Northern
Division. Oct. 10, 1922. F. M. Harshberger, Clerk.
By S. E. Leitch, Deputy. [49]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 294—E.

UNITED STATES OF AMERICA and UNITED
STATES SPRUCE PRODUCTION COR-
PORATION, a Corporation,

Plaintiffs,

vs.

CLALLAM COUNTY, WASHINGTON, WILL-
IAM A. NELSON, Sheriff of Clallam
County, Washington, E. S. STEWART,
Treasurer of Clallam County, Washington,
and J. O. MORSE, Assessor of Clallam
County, Washington,

Defendants.

Stipulation Re Forwarding of Original Exhibits.

IT IS HEREBY STIPULATED AND
AGREED, by and between the plaintiffs and the
defendants, by their respective counsel, that the
Judge of the above-entitled court, and before whom
this cause was tried, may enter an order herein,
directing that the original exhibits introduced in
evidence in this cause shall be sent up to the Cir-
cuit Court of Appeals in lieu of printed copies
thereof, and that it shall not be necessary that such
exhibits be printed.

Dated at Seattle, Washington, this 9th day of
October, A. D. 1922.

CAREY & KERR,
THOS. P. REVELLE,
JOHN A. FRATER,

Attorneys for Defendants.

WM. B. RITCHIE,

County Atty.,

ELLIS, FLETCHER & EVANS and
T. F. TRUMBULL,

Attorneys for Defendant.

Approved:

NETERER,
Judge. [50]

[Indorsed]: Filed in the United States District
Court, Western District of Washington, Northern
Division. Oct. 9, 1922. F. M. Harshberger, Clerk.
By S. E. Leitch, Deputy. [51]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 294—E.

UNITED STATES OF AMERICA and UNITED
STATES SPRUCE PRODUCTION COR-
PORATION, a Corporation,

Plaintiffs,

vs.

CLALLAM COUNTY, WASHINGTON, WILL-
IAM A. NELSON, Sheriff of Clallam

County, Washington, E. S. STEWART,
Treasurer of Clallam County, Washington,
and J. O. MORSE, Assessor of Clallam
County, Washington,

Defendants.

**Notice of Presentation of Statement of Evidence
for Approval.**

To the Above-named Plaintiffs and to THOMAS T.
REVELLE, United States Attorney, JOHN
A. FRATER, Assistant United States Attorney,
and to the Messrs. CAREY & KERR and
OMAR C. SPENCER, Attorneys for the Plain-
tiffs.

You. and each of you are hereby notified, that
the above-named defendants has heretofore on the
22d day of September, 1922, lodged in the office of
the clerk of the United States District Court, for
the Western District of Washington, Northern
Division, at Seattle, Washington, for your examina-
tion, a statement of the evidence in the above-enti-
tled cause, and of the facts occurring at the trial
thereof, for certification on the appeal of the de-
fendants from the final judgment rendered therein
by said court, on the 18th day of August, 1922, to
the Circuit Court of Appeals for the Ninth Circuit.
[52]

AND YOU ARE FURTHER NOTIFIED, that
the defendants will, at 10 o'clock A. M., on the 9th
day of October, 1922, at the courtroom of the said
United States District Court, at Seattle, Washing-
ton, ask the Honorable Jeremiah Neterer, Judge of

said court, before whom the said cause was tried,
to approve said statement.

WM. B. RITCHIE,
County Attorney,
ELLIS, FLETCHER & EVANS,
T. F. TRUMBULL,
Attorneys for Defendants.

Service of the foregoing notice accepted by receipt of copy admitted this 22d day of September, A. D. 1922.

THOS. P. REVELLE,
JOHN A. FRATER,
CAREY & KERR,
Attorneys for Plaintiffs.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 22, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [53]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 294—E.

UNITED STATES OF AMERICA and UNITED
STATES SPRUCE PRODUCTION CORPORATION, a Corporation,
Plaintiffs,

vs.

CLALLAM COUNTY, WASHINGTON, WILLIAM A. NELSON, Sheriff of Clallam

County, Washington, E. S. STEWART,
Treasurer of Clallam County, Washington,
and J. O. MORSE, Assessor of Clallam
County, Washington,

Defendants.

**Order Approving Statement of the Evidence on
Appeal.**

The following is a true, complete, and properly prepared statement of the substance of all the testimony introduced and admitted upon the trial of the above-entitled cause, in the United States District Court for the Western District of Washington, Northern Division, and together with the original exhibits therein and herein referred to and hereby made a part of said statement, constitute all of the evidence and exhibits, introduced and admitted in evidence upon said trial, essential to the decision of the questions presented by the appeal heretofore petitioned for herein by the defendants and allowed from the final judgment in this cause, and the foregoing statement contains all objections and exceptions made or taken to the admission and exclusion of evidence, and to all motions and rulings thereon made, in said District Court at said trial, and said statement is hereby approved.

The exhibits which were introduced and admitted in evidence upon said trial and which are hereby made a part [54] of this statement are the exhibits filed with the clerk of said District Court in the trial of this cause and marked by him respectively as follows:

1. Plaintiff's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32.
2. Defendant's Exhibits "A," "B," "C."
3. Balance Sheet of the United States Spruce Production Corporation dated December 31st, 1919, to be supplied by plaintiffs.

Dated at Seattle, Washington, this 9th day of Oct., A. D. 1922.

JEREMIAH NETERER,
Judge.

O. K.—JOHN A. FRATER,
Assistant United States Attorney. [55]

In the District Court of the United States for
the Western District of Washington, North-
ern Division.

No. 294—E.

UNITED STATES OF AMERICA and UNITED
STATES SPRUCE PRODUCTION COR-
PORATION,

Plaintiffs,

vs.

CLALLAM COUNTY, WASHINGTON, WILL-
IAM A. NELSON, Sheriff of Clallam County,
Washington, E. S. STEWART, Treasurer of
Clallam County, Washington, and J. O.
MORSE, Assessor of Clallam County, Wash-
ington,

Defendants.

Statement of the Evidence.

STATEMENT OF FACTS Occurring at the Trial of the Above-entitled Cause, Proposed by the Defendant, for Certification on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

BE IT REMEMBERED, that the above-entitled cause came on regularly for trial, in the above-entitled court, before the Honorable Jeremiah Neterer, Judge of the said Court, sitting in Equity, at Seattle, Washington, on the 15th day of June, 1922, at the hour of 11 o'clock A. M., of said day, the respective parties being represented as follows:

The United States of America, and the United States Spruce Production Corporation, plaintiffs, being represented by John Frater Esquire, Assistant United States District Attorney, and Messrs. Carey & Kerr,

And the defendants, Clallam County, Washington, William A. Nelson, Sheriff of Clallam County Washington, E. S. Stewart, Treasurer of Clallam County Washington, and J. O. Morse [56] Assessor of Clallam County Washington, by W. B. Ritchie, Esquire, County Attorney for Clallam County, Messrs. Ellis, Fletcher & Evans, and T. F. Trumbull, Esquire.

THAT THEREUPON, counsel for the defendants objected to the jurisdiction of the Court, and moved the Court to dismiss the action on the following grounds, to wit:

1st. That the United States of America is neither a necessary nor a proper party to the suit.

2d. That the cause of action does not arise under the Constitution or any law of the United States.

3d. That there is no disputed construction of the laws of the United States.

Counsel for the defendants, then stated that the motion and objection was made in all good faith, and that defendants intended to rely and insist upon it, but suggested, that if agreeable to the Court and counsel, that the motion and objection be taken under advisement and decision thereon reserved by the Court, subject to the introduction of testimony.

It being agreeable to counsel for the plaintiffs, the Court announced that its ruling upon the motion and objection of the defendants, would be reserved, and its decision given at the time of the closing of the case.

The statement of the issues involved was then made by the attorneys for the respective parties, and thereupon the following testimony was introduced on behalf of the plaintiff.

Testimony of Max Church, for Plaintiff.

MAX CHURCH, called as a witness on behalf of plaintiff, was sworn and testified as follows:

“I am a resident of Portland Oregon, and I am the [57] Secretary of the United States Spruce Production Corporation. My office is in the city of Portland but the principal office and place of

(Testimony of Max Church.)

business of the corporation is in the city of Vancouver, Washington. The office at Portland is a branch office. As secretary of the corporation, I have the charge and custody of its records, papers, and books. Lieutenant-Colonel Charles Van Way is the President of the Corporation, and Lieutenant-Colonel Van Way, Lieutenant-Colonel Fuller and Charles H. Carey, constitute the Board of Trustees. Lieutenant-Colonel Fuller is comptroller and treasurer. These constitute the officers of the corporation, except an assistant Treasurer and Cashier. The Articles of Incorporation of the United States Spruce Production Corporation have been amended four times and I have with me certified copies of the original and amended Articles of Incorporation.

Thereupon Plaintiff's Exhibit No. 1, consisting of the Original Articles of Incorporation, with the amendments was introduced in evidence and admitted without objection. The witness then continued as follows:

"The by-laws of the corporation have been amended from time to time and I have with me the original by-laws and the amendments thereto.

Thereupon Plaintiff's Exhibit No. 2, being the original by-laws of the United States Spruce Production Corporation was introduced in evidence and admitted, without objection.

The witness then produced and identified the records [58] of the proceedings and minutes of the corporation, and stated that he had made copies

(Testimony of Max Church.)

of such portions of the said record as was deemed material by plaintiffs.

Thereupon Plaintiff's Exhibit No. 3, being a copy of the records of the first meeting of the incorporators of the United States Spruce Production Corporation, was introduced and admitted without objection. The witness then continued as follows:

I have prepared a copy of the original Stock subscription, which I now produce.

Thereupon Plaintiff's Exhibit No. 4, being a copy of the Stock Subscription of the United States Spruce Production Corporation, was introduced in evidence, and admitted without objection. Continuing, the witness states:

Colonel Disque subscribed for the 99,993 shares in the corporation, in the name of the United States of America, by John D. Ryan, Director of Aircraft Production, pursuant to instructions contained in a telegram, addressed to Colonel Disque by John D. Ryan, authorizing him to subscribe for 99,993 shares of the capital stock of the corporation, which telegram is a part of the records of my office and a copy of which I produce.

Thereupon Plaintiff's Exhibit No. 5, consisting of a copy of telegram, was introduced in evidence, and admitted without objection. Continuing the witness stated:

I have a copy of the records of the first meeting of the Stockholders of the corporation, together

(Testimony of Max Church.)

with consent and waiver of Notice of the meeting [59] attached, which I now produce.

Thereupon Plaintiff's Exhibit No. 6, was introduced in evidence and admitted without objection. Continuing the witness stated:

I have in my records, a proxy from John D. Ryan Director of Aircraft Production, to Bryce P. Disque and I now produce a copy of the same.

Thereupon Plaintiff's Exhibit No. 7, being a certified copy of the proxy of John D. Ryan to Bryce P. Disque, was introduced in evidence and admitted without objection. Continuing the witness stated:

I have prepared copies of the minutes of the first meeting of the Board of Trustees of the Corporation, which I now produce.

Thereupon Plaintiff's Exhibit No. 8, being a copy of the minutes of the first meeting of the Board of Trustees of the United States Spruce Production Corporation, was introduced in evidence, and admitted without objection. The witness continued as follows:

The stock of the corporation was paid for pursuant to the call made at the first meeting of the Board of Trustees. The Director of Aircraft Production caused an amount equal to one percent of the amount of the stock he owned to be transmitted to the corporation, pursuant to that call. My records do not show how the shares that were subscribed by the individual subscribers were paid. At a meeting held October 23d, 1918, an amendment

(Testimony of Max Church.)

to the Articles [60] of the Incorporation of the United States Spruce Production Corporation was adopted.

Thereupon Plaintiff's Exhibit No. 9, being the minutes of the meeting of the Board of Directors, held October 23d 1918, was introduced in evidence and admitted without objection. Continuing the witness stated:

Pursuant to the action of the Board of Directors at the meeting of October 23d 1918, a special meeting of the stockholders was held on November 1st, 1918, at which all of the stock was represented, in person or by proxy, and at that time the Articles of Incorporation were amended in conformity with the suggestion of the Judge Advocate General. I have prepared a copy of the minutes of this meeting which I now produce.

Thereupon Plaintiff's Exhibit No. 10, being the minutes of the meeting of the Stockholders, of the corporation, held November 1st, 1918, was introduced in evidence, and admitted without objection. Continuing the witness stated:

At a meeting of the Board of Trustees, held on September 17th, 1918, certain resolutions were adopted, respecting the proposed saw mill to be located at Port Angeles, and Spruce Production Railroad No. 1. I have prepared copies of the minutes of this meeting which I now produce.

Thereupon Plaintiff's Exhibit No. 11, being a copy of the minutes of the meeting of the Board of Trustees, held [61] September 17th, 1918,

(Testimony of Max Church.)

was introduced in evidence and admitted without objection. Continuing the witness states:

On September 24th, 1918, the Board of Trustees caused the by-laws of the corporation to be amended at the suggestion of the Director of Aircraft Production, and I have prepared a copy of that portion of the minutes covering this matter, which copy I now produce.

Thereupon Plaintiff's Exhibit No 12, being an excerpt from the minutes of the meeting of the Board of Trustees held on September 24th, 1918, was introduced in evidence and admitted without objection. Continuing the witness states:

I have copies of the minutes of the meeting of the Trustees of November 29th, 1918, and also minutes of the meeting of November 14th, 1918, and herewith produce such copies.

Thereupon Plaintiff's Exhibit No. 13, being the minutes of the Trustee's meeting of November 29th, 1918, and Plaintiff's Exhibit No. 14, being minutes of the meeting of Trustees of November 14th, 1918, were introduced in evidence and admitted without objection. Continuing the witness stated:

It appears from my record that upon the signing of the Armistice, which was on the 11th day of November, 1918, notice was sent out to all the contractors who were operating under contracts entered into with the Government, and which contracts had been assumed by the corporation, to discontinue operations, and all contracts were can-

(Testimony of Max Church.)

celled, except a very few, which it was necessary to continue for the time being to preserve the property under construction and with [62] these exceptions all of the operations were terminated, and the corporation thereupon proceeded to take the necessary steps looking to the liquidation and preservation of the assets. The minutes just in evidence (Plaintiff's Exhibits 13 and 14) contain a copy of what was known as General Orders No. 34, and the corporation conformed to that order in the procedure and method adopted by the directors, and this was done under the directions given by John D. Ryan, on November 12th, 1918, to General Disque. John D. Ryan was director of Aircraft Production. Pursuant to the action of the Directors of the corporation an extensive advertising plan was carried on, looking to the sale of these properties on a bid plan, whereby the highest bidder, provided he met a minimum price set by the corporation, for the Government properties, would buy them on that plan. Catalogs were prepared of all the assets both real and personal, as part of the advertising campaign. Reference is made in the minutes to certain debentures, issued by the corporation. These debentures were issued pursuant to directions from the Director of Aircraft Production, and in compliance with such directions the Trustees of the Corporation, authorized the execution of \$25,000,000 of so-called Debenture Certificates of Debenture Bonds, which were issued and delivered to the Registrar therein

(Testimony of Max Church.)

named, for the United States. \$15,000,000 was credited to the Corporation on account of these debentures, and the balance of \$10,000,000 was to be determined, and has been determined by the relative accounts as they [63] stood at the time, the United States Production Corporation succeeded to the Spruce Production Division. These Debentures were owned by the United States of America. The bonds provide that they shall be retired at the time of the liquidation of the assets of the corporation. That they shall draw five per cent per annum interest if such interest is earned by the corporation; and shall be payable out of the net assets of the corporation and not payable unless a sum sufficient, after liquidation, is accumulated to retire them. They are not participating debentures, but are to be paid *pro rata*. I have here one of these debentures which has been cancelled.

Thereupon Plaintiff's Exhibit No. 15, being one of the cancelled debentures of the United States Spruce Production Corporation, was introduced in evidence and admitted without objection. Continuing the witness states:

My records show, that a letter written by Colonel Julian H. Harris of the Signal Corps of the United States Army and Emergency Officer, acting as Legal Advisor to the Air service, to Mr. Ryan, and Dated July 25th, 1918, was the first suggestion of the plan for carrying on governmental operations

(Testimony of Max Church.)

by means of this corporation. This letter I now produce.

Thereupon Plaintiff's Exhibit No. 16, being a letter from Colonel Harris to Mr. Ryan, dated July 25th, 1918, was introduced in evidence and admitted without objection. Continuing [64] the witness stated:

I have here a telegram dated August 8th, 1918, from General Disque to Mr. John D. Ryan, which I now produce.

Thereupon Plaintiff's Exhibit No. 17, being a telegram from General Disque to Mr. Ryan, was introduced in evidence and admitted without objection. Continuing the witness stated:

I have here a letter dated August 19, 1918, from Mr. Ryan to the Secretary of War, which I now produce.

Thereupon Plaintiff's Exhibit No. 18, being a letter from Mr. Ryan to the Secretary of War, was introduced in evidence and admitted without objection. Continuing the witness stated:

I have here a telegram, dated August 19th 1918, to Gen. Disque authorizing him to subscribe for stock in this corporation, which I now produce.

Thereupon Plaintiff's Exhibit No. 19, being a telegram to General Disque, dated August 19, 1918, was introduced in evidence and admitted without objection. Continuing the witness stated:

I have a telegram from General Disque to Mr. Potter, dated September 9th, 1918, which I now produce.

(Testimony of Max Church.)

Thereupon Plaintiff's Exhibit No. 20, being a telegram from General Disque to Mr. Potter, was offered in evidence and admitted without objection. Continuing the witness stated:

I have a telegram from General Disque to Mr. Potter, dated September 24th, 1918, which I now produce. [65]

Whereupon Plaintiff's Exhibit No. 21, being a telegram from General Disque to Mr. Potter, was introduced in evidence and admitted without objection. Continuing the witness stated:

Mr. Potter was acting Director of Aircraft Production of the United States, during the time that Mr. Ryan was in Europe. I have a copy of a letter from Mr. Potter addressed to the Honorable Benedict Crowell, Acting Secretary of War, under date of October 9th, 1918, which I now produce.

Whereupon Plaintiff's Exhibit No. 22, being a letter from Mr. Potter to Crowell, was introduced in evidence and admitted without objection. Continuing the witness stated:

I have here a letter from the Secretary of Agriculture to the Secretary of War, dated Jan. 24th, 1920, and produce the same.

Whereupon Plaintiff's Exhibit No. 23, being a letter from the Secretary of Agriculture to the Secretary of War, was introduced in evidence and admitted without objection. Continuing the witness stated:

The corporation was organized in August, 1918, and from that date until November 11th, 1918,

(Testimony of Max Church.)

upon the signing of the Armistice, its activities were directed to the Government's program for the production of aeroplane lumber. After the signing of the Armistice, its activities were directed to the salvaging of its assets, converting them into money and winding up its business, liquidating its assets and otherwise getting [66] ready to dissolve. After the Armistice there were no operations carried on not directly concerned with the winding up and liquidation of the corporation's business and its assets. The corporation actively functioned from about the first of September, through September, October, and a part of November, up to the signing of the Armistice. At the time the corporation was created the United States conveyed to the corporation all of its aeroplane properties and activities and I have that conveyance with me and produce the same.

Thereupon Plaintiff's Exhibit No. 24, being conveyance to the United States Spruce Production Corporation, was introduced in evidence and admitted without objection. Continuing the witness stated:

Prior to the creation of the United States Spruce Production Corporation and the conveyance to it of the properties set forth in Exhibit 24, the activities in aircraft production were carried on by the Production Division, the Bureau of Aircraft Production, and afterwards, the Air Service was charged with the duties of producing aeroplane material from the Forests of the Northwest. The

(Testimony of Max Church.)

Division comprising some 25,000 officers and men proceeded to take the necessary steps to produce this aeroplane lumber. This was accomplished by the building of railroads into proper stands of timber in the Northwest, chiefly in Lincoln [67] County Oregon, and Clallam County, Washington, and the building of Saw Mills, and Cut-up Plants for the manufacture and remanufacture of the forest products, by creating depots at Vancouver Barracks for the getting together of aeroplane material and also for the resawing and remanufacturing of material at that point; Forces of laborers and soldiers of the United States Army were organized for the purpose of maning and operating these activities. The laborers employed were chiefly soldier labor. The officers of the corporation and principal agents were Army officers. The properties described in the complaint in this suit, which is sought to be taxed by Clallam County, Washington was one of the chief projects being prosecuted by the Government prior to the organization of the corporation, and after-warded on the part of the corporation.

The Railroad known as Spruce Railroad No. 1 is Standard gauge constructed of eighty pound steel from a junction point on the Chicago Milwaukee & St. Paul Railroad in Clallam County, generally westward along the north shore of Lake Crescent and to a point near the south shore of Lake Pleasant in Clallam County Washington, and is approximately thirty-six miles in length, besides sidings, turnouts and necessary switching facilities.

(Testimony of Max Church.)

The mill site is of approximately one hundred acres at Port Angeles Washington, on tide water, and a Mill was erected with a Machine shop, burner, and other structures necessary for the [68] carrying on of the sawmill operations. These properties were originally acquired by the Siems-Carey-Kerbaugh Corporation, which at that time was operating under a contract entered into with the United States Government. These were a part of the properties conveyed by the conveyance and assignment introduced in evidence as Plaintiff's Exhibit 24.

The Government built, operated and completed, added to or controlled thirteen railroads. During its operation three were entirely constructed by the Government and the other ten were railroads which the Government acquired and added to or otherwise handled as its own during the emergency. Two sawmills were constructed besides the cut-up plant at Vancouver Barracks.

The properties mentioned in the complaint were the only ones located in Clallam County, Washington.

Since the signing of the Armistice the Government has taken the necessary steps to protect these properties from fires, and the encroachment of the elements, and to protect them and keep them in a saleable condition, and has from time to time carried on extensive negotiations with parties interested, looking to the sale of the properties. The officers of the corporation have received numerous in-

(Testimony of Max Church.)

structions from the Secretary of War, the [69] chief of airplane service and others who have assumed control of the activities of the Trustees and officers of the United States Spruce Production corporation, which instructions are included in the exhibits which have been introduced in evidence here.

On cross-examination, the witness MAX CHURCH, testified as follows:

\$25,000,000.00 of the Debentures authorized by the Board of Directors of the United States Spruce Production Corporation were actually issued, but a total issue of \$90,000,000.00 was authorized, as appears from Exhibit No. 12. The action of the Board of Directors, authorized and contemplated the Allied Governments taking the debentures as well as the United States. The debentures issued were made payable to the Director of Aircraft Production. They were not offered to the public. Referring to Exhibit 21, wherein it provides "The Board of Directors were also authorized to issue debentures in the sum of \$25,000,000.00 and pay the United States Government the above amount, based on the estimated requirements of the Army and Navy, the allies, including April 13th Debentures should be distributed as follows: Army \$7,725,000.00, Navy \$1,220,000.00. Great Britain \$8,545,000.00; France \$3,845,000.00; Italy \$3,665,000.00. This distribution was not made as Mr. Potter did not accept the suggestion of his subordinate, and that plan was never carried out. After the Armistice was signed nothing was done by the corporation

(Testimony of Max Church.)

excepting the furtherance of liquidating of its assets. [70] I recall entering into a contract with the Puget Sound Mills & Timber Company. I do not recall the date but think it was in February of 1921. This contract covered a period of ten years and contemplated transactions affecting the railroad involved in this action, which is a part of the property of the Spruce Production Corporation. It provided for a method whereby the title to this property could be perfected and put in a saleable condition, and provided for the hauling of logs of the Timber Company over the railroad, during a period of ten years. The document handed to me is a certified copy of the contract with the Puget Sound Mills & Timber Company.

Thereupon Defendants' Exhibit "A," being copy of the contract between the United States Spruce Production Corporation and the Puget Sound Mills & Timber Company, was introduced in evidence and admitted without objection. Continuing the witness stated:

There were other contracts for hauling logs over the Spruce Production Railroad for compensation, and I have copies of two contracts executed between the Corporation and C. J. Erickson. One is supplemental to the other.

Thereupon Defendants' Exhibit "B," being contract dated April 21st, 1919, between the Corporation and C. J. Erickson, was introduced in evidence and admitted without objection, also Defendant's Exhibit "C," being supplemental contract between

(Testimony of Max Church.)

the corporation and C. J. Erickson, under date of July 20th, 1920, was introduced in evidence and admitted [71] without objection. Continuing the witness stated:

These were all the contracts relating to hauling products over this road that I recall and I am sure that is all. The corporation also entered into a contract with the Clallam Lumber Company for the purchase of Logs. This was a written contract but I have no copy of it with me. My best impression is that this contract was entered into the latter part of 1920. The dealings with the Clallam Lumber Company involved claims against both the Government and the Spruce Corporation. Part of it was the settlement of these claims. The contention was made by the Clallam Lumber Company that an isolated body of timber, at the western terminus of this Spruce Railroad No. 1, was made valueless to them by reason of the ownership of the railroad, and in the settlement of the various claims on both the part of the Spruce Production Corporation and the Clallam Lumber Company, the price was set on this timber, which included some 6,000,000 feet and it was taken over by the corporation. The Spruce Production Corporation, as a part of the same transaction, secured from the Clallam Lumber Company a release of the claims which had been prosecuted by the company against the corporation. My impression is that the Spruce Production Corporation paid the Clallam Lumber Company three dollars per thousand for that body of timber. The

(Testimony of Max Church.)

Spruce Production Corporation [72] thereafter resold this timber to Mr. Erickson and I think the price was five dollars for all species other than Hemlock and two dollars for hemlock. The Spruce Production Corporation held this timber a matter of a few months before selling it.

In a certain sense there were other transactions involving the purchase of timber and reselling it. There was a transaction entered into by the corporation which was undertaken before the organization of the corporation, as a part of the acquisition of the capital property and afterwards, in the course of liquidation, sold. This was a tract of timber in Lincoln County, Oregon. It was purchased for a figure agreed upon by the Government before the organization and was afterwards sold with a sawmill and railroad but was not priced separately from the other property.

Spruce Production Railroad No. 1 is thirty-six miles long and with a right of way one hundred feet wide, covering the whole distance. All of the right of way was acquired by purchase or by license from the Forestry Department of the Commissioner of Public Lands of the State.

At the time of the organization of the Spruce Production Corporation the work of construction of the railroad was well advanced, but it is impossible for me to say with any exactness, [73] how much was constructed after the organization because the operations *was* carried right on through. In constructing the sawmill it was the intention to make the com-

(Testimony of Max Church.)

plete mill such as would saw the logs and complete the manufacture to a finished product. The mill building was practically completed, the machine-shop was built; and almost completed; the foundation for the burner was in; the log haul was installed; the bulkhead was built along the tide frontage to save the property, and the structures were almost complete. The mill was never actually operated. The plan was to construct a mill for the purpose of aeroplane lumber manufacture, but it was to be a complete sawmill for the purpose for which it was built, viz., to produce aeroplane material, but the plan of its construction would permit the production of material for commercial purposes. If used for general commercial purposes I am informed it would necessitate certain changes in the plans and equipment.

Matters pertaining to accounts or balance sheets *was* prepared by the accountant and I haven't them. I haven't the information in regard to the number of employees or pay-rolls but that information has been furnished and is here. In speaking of the Government and Spruce Production Corporation, it is impossible for me to differentiate, when officers [74] wearing the uniform of the United States Army would come and carry on negotiations and have discussions and when such army officers act I cannot undertake to say that it is not the Government. A great many of these negotiations were carried on by officers of the United States Army. All the contracts were contracts of the Spruce Pro-

(Testimony of Max Church.)

duction Corporation, but I want to be understood to say that the negotiations looking to the salvaging of these properties was by the Government. A great many of the negotiations were made by these officers for the United States Government and the United States Army. They were negotiations had with prospective purchasers but I do not know that any of them negotiated independently of the Spruce Production Corporation or the officers of the Spruce Production Corporation.

On redirect examination the witness MAX CHURCH testified as follows:

Each of the Trustees who held office made an assignment by which they surrendered all rights or claims to any personal or private interest in the shares of stock they owned or held. The assignments were all alike and are in the form of the assignment signed by Major Fickel, shown on page 289 of the record book and is as follows: "For value received, I hereby assign, and set over to the Secretary of War of the United States of America, or to his order, for the benefit of the [75] United States of America, any and all moneys, property or dividends, which are now due me, or which may hereafter become due me or accrue to me from any source whatsoever, by reason of any stock in the United States Spruce Production Corporation, a Washington corporation. It is understood that the share of stock now standing in my name on the books of the corporation has been issued to me solely

(Testimony of Max Church.)

for the purpose of qualifying me as a Trustee of said corporation.”

The Certificates of Stock of this corporation are in the Stock Book in my custody. All the Trustees of the corporation have endorsed their share in blank and turned them back to the Secretary. Certificate No. 8 was issued to the Director of Aircraft Production of the United States for 99,993 shares of stock. At the time this certificate was issued the number of trustees as provided by the Articles of Incorporation was seven, thereafter, the number of trustees was reduced, by amendment of the Articles of Incorporation to three. Whereupon four shares which were held by the outgoing trustees were issued on certificate numbered seventeen to the Director of Aircraft Production of the United States. The Certificates are in the hands of the Director of Aircraft Production, lodged for safe-keeping with the chief of Finance of the United States. The physical custody of the shares of stock held by the respective Trustees, is in the Secretary of the United States Spruce Production Corporation. [76]

At the time the Armistice was signed some of the titles to the railroad right of way had been acquired by the Siems Carey H. S. Kerbaugh Corporation, but a portion of the titles had not been acquired at that time and was subsequently acquired by the corporation itself, and a considerable amount of this right of way acquired by the corporation itself was acquired from the Puget Sound Mills &

(Testimony of Max Church.)

Timber Company. The contract which had been referred to as having been entered into with the Puget Sound Mills & Timber Company, covered that transaction. The land belonging to the Puget Sound Mills & Timber Company, which was acquired pursuant to the terms of the contract in evidence, was necessary as an integral part of the Spruce Production Railroad No. 1, a considerable portion of it.

The contract with the Clallam Lumber Company *was* has been referred to was not a matter involving a continuity or right of way. There was a little difference between the Clallam Deal and the Puget Sound deal. The corporation has a number of dealings on different transactions with the Clallam Lumber Company relating to the acquisition of right of way for the railroad. The final settlement with the Clallam Lumber Company was a transaction whereby we got a complete clearance for the western termination of the railroad, which was a part of the lands acquired by the corporation under its activities, the title to which was not perfected until this contract was entered into. So that there will be no misunderstanding I want to [77] explain that part of the land involved was used by the corporation, and its predecessors the Siems Carey H. S. Kerbaugh Corporation, for a mill site down there. In the actual settlement of the claim for damages to other lands, some of this land was turned back to the Clallam Lumber Company and its acquisition of this timber was a condition precedent to a

(Testimony of Max Church.)

general release by the Clallam Lumber Company to the United States Spruce Production Corporation.

On Armistice Day the railroad was not completed. There was some other necessary work to be done to hold the property together and preserve it. I am not prepared to say the amount of or the nature of such work but its character was the completion of the railroad by laying steel and putting ties in place and putting in switches and other things incident to the finishing of the railroad in the course of construction. There was some timber down on the right of way and two contracts were entered into with C. J. Erickson with respect to cleaning up down timber. A contract and a supplemental contract, these being the contracts introduced in evidence as Defendants' Exhibits "B" and "C."

None of the debentures authorized was taken by the Allied Government or any Government other than our own. We had some dealings with the Allies direct. That is to say the United States Government had dealings with them both before the organization of the corporation and afterwards which were charges against the allies, for deliveries of aeroplane material and credits and [78] and payments on these charges for deliveries. I am not prepared to say whether these payments were made to the Treasurer of the United States or to the Corporation. Mr. O'Kelly knows. There was \$25,000,-000 of these debentures authorized and they were all purchased by the Government of the United

(Testimony of Max Church.)

States. At the time of the actual transfer by the Secretary of War to the corporation as shown by the instrument of conveyance that has been introduced in evidence, there was a certain amount of money which had been expended by the Spruce Production Division and the Bureau of Aircraft Production, which at that time it was impossible to determine the exact amount of, and it was estimated the sum of Ten Million Dollars to be ample to cover the expenses up to the time of this taking over. Twenty-five Million Dollars worth were issued and Fifteen Million cash issued to the corporation and the balance of ten million was used as a setoff against a valuation of the property which came into the corporation through this assignment. The corporation has never declared any dividends.

(Witness excused.)

Testimony of W. H. O'Kelly, for Plaintiffs.

W. H. O'KELLY, called as a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

My name is W. H. O'Kelly. I reside at Portland, Oregon, and I am an accountant and since March [79] 1920 I have been the accountant for the United States Spruce Production Corporation. It is my duty to keep the books and records and have charge and custody of the books of account and vouchers for payments and disbursements. I know the method of keeping the accounts as between the corporation and the Government. In the liquidation of the affairs of the corporation whenever

(Testimony of W. H. O'Kelly.)

enough funds are accumulated the money is forwarded to the Chief of Finance to retire some of the Debenture Bonds. There is an account between the Government and the Corporation. I have an account as between the Government and the corporation which I now produce. Attached to this statement is a letter dated November 11th from the Chief of Air service to the Comptroller of the corporation in relation to the attached account.

Thereupon Plaintiff's Exhibit 26, being a statement of account between the corporation and the Government, was introduced in evidence and admitted without objection. Continuing the witness stated:

I have prepared a statement of the railroads built during the activities, and the cost of the same, which I now produce.

Thereupon Plaintiff's Exhibit No. 27, being a statement of the railroads built and their cost, was introduced in evidence, and admitted without objection. Continuing the witness stated:

I have prepared a statement of the amount of war material that was produced during these activities [80] which I now produce.

Thereupon Plaintiff's Exhibit No. 28, being a statement of war material produced, was introduced in evidence and admitted without objection. Continuing the witness stated:

I have prepared a statement of the cash receipts and disbursements of the corporation, which is cor-

(Testimony of W. H. O'Kelly.)

rect according to my books, and which I now produce.

Thereupon Plaintiff's Exhibit No. 29, being a statement of the receipts and disbursements of the corporation, was introduced in evidence and admitted without objection. Continuing the witness stated:

I have made up a statement of the capital expenditures of the corporation by years, according to my books, which I now produce.

Thereupon Plaintiff's Exhibit No. 30, being a statement of the capital expenditures by years, was introduced in evidence and admitted without objection. Continuing the witness stated:

The statement last furnished covered labor, material and supplies. I have a detail of the disbursements up to August 31st, 1918, and I have a total of the disbursements from August 31st, 1918, to March 31st, 1922, which I now produce.

Thereupon Plaintiff's Exhibit No. 31, being a statement of the total of the disbursements, was introduced in evidence and admitted without objection. Continuing the witness stated:

I have made up a labor pay-roll as shown on our books for the month of May, 1922, and the [81] number of employees for that month, which I now produce.

Thereupon Plaintiff's Exhibit No. 32, being a statement of the labor pay-roll for May, 1922, was introduced in evidence and admitted without objection. Continuing the witness stated:

(Testimony of W. H. O'Kelly.)

The corporation is liquidating as fast as they can and selling its assets. Referring to Exhibit No. 30, I will state that my accounts do not show the progress of liquidation since the Armistice Day but taking it by years, taking it from a Trial Balance of August 31st, 1918, and the trial balance of August 31st, 1919, it shows that there was expended by the United States Government and by the United States Spruce Production Corporation the sum of \$17,462,-832.62. The amounts expended by the United States Government and the United States Spruce Production Corporation respectively is not segregated. I get the Government's figures from a trial balance entered on that date, by running across these figures you can get what the Spruce Production Corporation spent. In the final wind-up the Government got debentures for everything that they furnished to the Spruce Production Corporation and also the money the Government had expended prior to that was taken into consideration. The Government subscribed for \$21,500,000 worth of debentures and these were issued to the Government. The entry on our books was that we owed the Government twenty-five million dollars which they [82] had set up against our account and in our account as against the Government we charged them with \$3,500,000 as an offsetting entry to show the balance. All the debentures had been retired except approximately Five Million Three Hundred Thirty-eight Thousand. In the liquidation process the corporation has turned over to the Treasurer

(Testimony of W. H. O'Kelly.)

Ten Million Dollars and they owe us Three Million Five Hundred Thousand Dollars, that has been applied on the debentures. Something over Nineteen Million has been paid back to the Government on these advances.

On cross-examination, the witness W. H. O'KELLY, testified as follows:

The nineteen million paid back to the Government was on advances and these payments were applied on the debentures. The Spruce Corporation got out detailed monthly balance sheets for each month. I have none of them with me.

On redirect examination the witness W. H. O'KELLY, testified as follows:

The operation of the corporation as a whole shows a loss and the total liquidation of all the remaining assets will not be equivalent to the total amount expended in this operation. None of the balance sheets at any time show any profit to the corporation and there never has been a profit.

On recross-examination the witness, W. H. O'KELLY, testified as follows: [83]

One Hundred Thousand has been paid on the stock subscriptions and there is Nine Million Nine Hundred Thousand still unpaid on the stock subscriptions which have not been called. The unpaid outstanding debentures at this time amount to \$5,338,667.09. There was Twenty-one Million Five Hundred Thousand of cash advances through the Spruce Corporation. They charged us with Twenty-

(Testimony of W. H. O'Kelly.)

five Million and we took a credit of Three Million Five Hundred Thousand on our books. The book value of the present assets of the Spruce Production Corporation is \$11,953,904.57. According to the books of the corporation if the Nine Million Nine Hundred Thousand of unpaid stock subscriptions were paid in, it would appear that the corporation would pay out all its liabilities and have money over.

The liabilities of the corporation, outside of the Five Million Three Hundred Thousand Debentures are the liabilities of the capital stock One Hundred Thousand and current liabilities of \$28,482.49. The current liabilities are some invoices unpaid and reserves that were set up to take care of our losses that will be anticipated in selling the properties. The property is set up at cost. The present unpaid liabilities are \$28,000.00 current liabilities One Hundred Thousand paid in on capital stock and Five Million Three Hundred Thousand of debentures and as against that we have book assets of something over eleven million dollars at cost. That is the way we carry them on our books. [84]

On redirect examination the witness, W. H. O'KELLY testified as follows:

The assets of Eleven Million is represented by the cost, of what the railroad, the principal asset at the present time, cost. That is not the same as present cost or what we can get for them but is about five times what we expect for them.

(Witness excused.)

Testimony of Charles Van Way, for Plaintiff.

CHARLES VAN WAY, being called as a witness on behalf of the plaintiffs, after being first duly sworn, testified as follows:

My name is Charles Van Way. I am Lieutenant-colonel of Cavalry in the United States Army and reside at Vancouver Barracks Washington. I am the president of the United States Spruce Production Corporation and have been such throughout the past two and one-half years. I was assigned to that duty with this corporation by the War Department and elected as president by the Board of Trustees of the corporation.

Counsel for plaintiffs then stated:

I want the record to show that these military officers have been assigned to different duties by the War Department and that they draw their salaries from the Treasury of the United States and not for the Spruce Production Corporation.

Counsel for defendants objects. [85]

The COURT.—I think the objection will be sustained to the question as propounded, but you may ask him where he gets his compensation.

COUNSEL FOR PLAINTIFFS.—It is one of the important points to us whether this is a private corporation as distinguished from a Government corporation. It is my position and my purpose to show by this witness that he and the other officers of the corporation are officers of the United States Army acting under express orders of the War De-

partment having been assigned to this duty the same as an officer assigned to regular duties in the course of army work and it is to connect this corporation and its activities with the War Department and to show it is not an independent corporation but is a part of the War department activities.

The COURT.—Your purpose was apparent a long time ago but let him just state the facts. We all know that he is an officer and was assigned to duty and the minutes show that he was elected to the board and he can show who pays him and whether he gets a compensation from the corporation or whether he gets his compensation from the Government.

Counsel for defendants then objects to the testimony on the general ground that it is immaterial.

The COURT.—The answer may give what compensation he gets and where it comes from but the objection will be sustained to the extent I have stated. [86]

COUNSEL FOR PLAINTIFFS.—I want to show that he has an assignment as any military officer has to his duty, by a direct order. I want to show that he was delegated to take charge of this work by the War Department.

The COURT.—This being a court case, he may state, in addition to what I have stated a while ago, what, if any, additional duties were imposed upon him by his superior officers in assigning him to Vancouver.

Thereupon counsel for defendants requested that it be understood that all evidence touching upon these points go in subject to objection.

The COURT.—It will be so understood. Continuing the witness stated:

I am not paid any salary by the corporation but receive my compensation from the pay of the army through the finance officer of the district in which I serve. I receive the exact pay of an officer of my rank and it comes from the United States Treasury and not from the assets of this corporation. I was directed to this duty by an order of the War Department issued in the regular way, specifying that I be the President of this corporation. The other officers of the corporation are assigned under similar orders from the War Department to other duties. Other officers assigned to the corporation are paid from the same source. I get orders from time to time from the War Department with reference to the management of the corporation and I am summoned to Washington occasionally to receive orders. [87] I report to the department as to matters of business handled by the corporation, regularly, and auditors and inspectors from the War Department are detailed to check and examine the books and accounts. No important contracts or transactions are carried on by the officers or trustees without the direct and expressed rule and direction of the War Department. The Director of Aircraft production is the superior officer in the War Department with charge of these activities and he

(Testimony of Charles Van Way.)

is directed by the Secretary of War. I frequently get directions from and have conference with the Secretary of War about these activities. In the matter of the liquidation of the corporation, the trustees have gone to Washington to submit these matters to the Secretary of War himself. The officers and trustees do not take any action independent of these instructions from Washington.

On cross-examination the witness VAN WAY testified as follows:

The United States Government, as holders of the majority of the stock of the corporation might control the board but I never looked on it that way. The corporation has civilian employees and they are paid out of the Spruce Production funds. Mr. Church the Secretary of the corporation is a civilian and was elected by the Board of Trustees of the United States Spruce Production Corporation. Mr. [88] O'Kelly is also a civilian. I do not know how many civilian employees there were during the latter part of 1918. At the time of the Armistice there were approximately thirty thousand troops consisting of twenty thousand enlisted men and eleven thousand officers but I am unable to state how many civilians. Since I have been assigned to this corporation substantially my sole duty has been confined to operating this corporation for the last two and a half years. When this corporation was organized four out of the seven trustees, viz: Messrs. Ladd, Benson, Reed and Donovan were civilians. The present Trustees are Colonel

(Testimony of Charles Van Way.)

Fuller, Charles H. Carey and myself being two army men and one civilian. The Secretary and Accountant are civilians and all other employees are civilians there being only two officers with the corporation.

Testimony of Arthur L. Fuller, for Plaintiff.

ARTHUR L. FULLER, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

My name is Arthur L. Fuller. I reside at Portland Oregon and I am a member of the Board of Trustees of the United States Spruce Production Corporation and its comptroller and Treasurer and have charge of the accounts and books of the corporation. I am a Lieutenant-colonel in the United States Army and was assigned to this duty by the Secretary of War. [89]

Thereupon counsel for plaintiff propounded the following question to the witness.

Q. About what time did you begin your service?

Thereupon counsel for the defendant objected on the ground that the same was immaterial.

The COURT.—The objection will be noted and I will let it go into the record so the counsel can present his views on the law in the matter later. Continuing the witness stated:

I began my services about a week ago. I had a certain general knowledge of the affairs of the United States Spruce Production Corporation by reason of the fact that I was budget officer of the

(Testimony of Arthur L. Fuller.)

Air Service of the War Department for some time prior to coming out here on this duty. I succeeded Major Fickle as a member of the Board of Directors and Treasurer of the corporation. Up to a week ago he was serving in that capacity. The administration of the budget law for the Federal Government calls for a budget officer for each Executive department and each major branch of every department, and as budget officer for the air service, I became familiar with the history of this corporation and its affairs. In the financial affairs of the air service in its ordinary administration no distinction is drawn between the Spruce Production Corporation and any other part of the air service. I have here the army regulations that cover this matter of the Spruce Production corporation which I now produce. [90]

Thereupon counsel for plaintiff requested the witness to read into the record any regulations bearing on the matter.

Thereupon counsel for defendants objected on the ground that the same was incompetent, immaterial and irrelevant, and simply encumbering the record.

The COURT.—The objection is sustained; you are asking him to read what he thinks has a bearing on it.

Thereupon counsel for plaintiff offered in evidence Army Regulations No. 95-5 date November 17th, 1921, paragraph "E."

(Testimony of Arthur L. Fuller.)

Thereupon counsel for defendants objected to the offer on the ground that it was incompetent, immaterial and irrelevant and tends to prove no issue in this case.

The COURT.—Just read it into the record.

The witness reads: "I, the chief of Air Service—(inserting the words) 'chief of Air Service'—will, in accordance with instructions from the Secretary of War, exercise administrative supervision over the liquidation of the Bureau of Aircraft Production and the United States Spruce Production Corporation." This regulation was issued November 21st and is a substitution for the former provision in Army Regulations which is a continuous series and are the same regulations which continued in the past prior to the date of this particular list of regulations under instructions of the Secretary of War. As Budget Officer of the Air Service I made inquiries as to the situation in general of the United States Spruce Production Corporation and by this means became familiar with the method of handling the finance [91] affairs of the corporation and its regulations with the War Department but I did not have charge of any detailed records. The function of the budget officer in relation to the Spruce Production Corporation would require him to be informed as to the financial regulations of the Spruce Production Corporation to the air service in order that if further appropriations from Congress were required for any purpose the necessary action could be taken. He must know in

(Testimony of Arthur L. Fuller.)

general the debit and credit situation with reference to the Spruce Production Corporation.

Thereupon counsel for plaintiffs propounded the following question to the witness:

Q. Will you outline briefly the various steps taken by the United States in getting out the aeroplane material before the war and include a history up to date?

Thereupon counsel for defendants objected on the ground that it was immaterial, incompetent and irrelevant and tended to prove no issue in the case.

The COURT.—I do not see how that could in any way affect the legal situation here that we are inquiring about, the steps taken.

Thereupon counsel for plaintiff stated: Maybe it is rather vague and remote but I will explain what I am getting at, for counsel's benefit as well as the Court. This corporation was the result of a certain evolutionary process as shown by the evidence already shown here. The original suggestion and its development in the incorporation [92] of this corporation and its activities all fit in with certain other war transactions. It had not only the duty of getting out war material for the army itself during the war but under the act of Congress, for the navy, but prior to its activities a certain amount of aeroplane material had been gotten out and perhaps very extensively, running into millions of dollars which was transferred to the corporation. The history of the various acts

(Testimony of Arthur L. Fuller.)

of Congress and the orders of the department which worked out this corporation scheme and made it a part closely correlated with what had been done and what would be done is necessary to be shown in some way in the case, either by argument from the various statutes or by the statement of some witness who is familiar with it. My purpose is briefly to give a survey of that in a few sentences that might take a long time in other ways.

The COURT.—How long will it take to tell it.

The WITNESS.—Five minutes.

The COURT.—All right, tell it.

Continuing the witness stated: Aeronotic matters of the department, in the beginning of the war, were handled by the signal corps of the army. In May, 1918, the President, by virtue of the Power conferred upon him by the so-called Overman Act, redistributed the powers and functions of the Executive department, created the Bureau of Aircraft Production [93] and a division of Military Aeronotics, the Bureau with which we are concerned here, the executive officer of which was the Director of Aircraft Production. The officer referred to in the Act authorizing the organization of the Spruce Production Corporation, who under instructions contained in that proclamation functioned under the Secretary of War. On January 29th, 1919, susequent to the Armistice these two divisions were placed together, forming the Air Service as then provided for by Army regulations, functioning under the Director of Air Service,

(Testimony of Arthur L. Fuller.)

whose title was subsequently changed to Chief of Air Service, July 11th, 1919, by act of Congress approved that date, this Organization of Air Service with its powers, functions, and duties then provided by orders and Army Regulations continued until June 30th, 1920, on which date the National Defense Act, amended came into effect and is in effect now, and provided for the office of chief of Air Service, that officer who controls and directs the aircraft production under the Army Regulations. There has been certain settlements made between the Spruce Production Corporation and the War Department.

(Witness excused.)

Testimony of W. J. Barry, for Plaintiff.

W. J. BARRY, produced as a witness for plaintiff, being first duly sworn, testified as follows:

My name is W. J. Barry, and I live in Washington D. C. I am Senior Cost Accountant, Air Service, War Department, United States Army. In April, 1922, I was given orders through the Chief of Air Service to proceed to [94] Portland, Oregon, and make a report of the United States Spruce Production Corporation. I arrived here on May 2d and am still making it. This is the regular audit and is continued from the previous audit which was from September, 1920. I am making an audit up to date. I get my pay from the Finance Officer of the United States Army at Washington, D. C. There has been no final account

(Testimony of W. J. Barry.)

between the Government and the corporation or any financial adjustment arrived at and cannot be until the final liquidation. There are no accounts between the corporation and any of the Allied Governments. The Allied Governments are dealt with through the Government direct in the general settlement.

On cross-examination the witness W. J. BARRY testified as follows:

The books of the corporation do not show sales of aeroplane materials to the allies and there are no entries on the books of that kind and never was. There are no receipts from that source and no credits on accounts whatever. The only account was with the United States Government. There is no account in regard to the Debentures with any allied government. There are accounts with hundreds of citizens of the State of Washington and Oregon.

(Witness excused.) [95]

Thereupon counsel for the plaintiffs stated that the defendants had requested a certain balance sheet which we have sent for to the office of the corporation and it is our understanding it may be introduced to-morrow morning. It will arrive by that time and with that exception our case is closed so far as the plaintiff is concerned.

Thereupon counsel for the defendants stated: We have no evidence outside of that balance sheet we have asked for. All the evidence has gone in at this time and the case can now be considered

closed with the introduction of that one balance sheet. The contract with the Callam Lumber Company will be waived.

Thereupon the evidence was closed.

Thereupon counsel for the defendants moved the Court to dismiss the action upon the grounds:

1. That the Court has no jurisdiction.
2. That the United States is neither a necessary nor proper party.
3. That this cause of action does not arise under any law or the constitution of the United States and the suit is between citizens of the same State.

Thereupon counsel for the defendants, without waiving the foregoing motion further moved that the case be dismissed on the ground that the complaint does not state facts sufficient to constitute a cause of action and does not show facts entitling the complainant to the relief sought or any relief whatever, and on the further ground that the evidence introduced fails to show any cause of action and fails to show that the plaintiffs are entitled to the relief sought or to any relief whatever. [96]

Thereupon argument for counsel for the respective parties was had and on June 16th, 1921, the cause was submitted to the Court and was by the Court taken under advisement.

[Endorsed]: Statement of Evidence lodged Sept. 22, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

Statement of Evidence approved and order approving filed in the United States District Court,

Western District of Washington, Northern Division, Oct. 9, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [97]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 294—E.

UNITED STATES OF AMERICA and UNITED
STATES SPRUCE PRODUCTION COR-
PORATION, a Corporation,

Plaintiffs,

vs.

CLALLAM COUNTY, Washington, WILLIAM A.
NELSON, Sheriff of Clallam County, Wash-
ington, E. S. STEWART, Treasurer of Clal-
lam County, Washington, and J. O. MORSE,
Assessor of Clallam County, Washington.

Defendants.

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare a transcript of the record in the above-entitled cause for use on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to be transmitted to the Clerk of said Circuit Court of Appeals, and you will please incorporate into such transcript the following portions of the record in this cause:

1. The bill of complaint.
2. The defendants' answer.

3. The decision of the Court.
4. Decree.
5. Assignments of error.
6. Petition for Appeal.
7. Order allowing appeal.
8. Appeal bond.
9. Stipulation that original exhibits be forwarded to the Circuit Court and that same be not printed.
10. Statement of the evidence. [98]
11. Notice by defendants to plaintiffs that defendants would ask the Court to approve the statement of the evidence on October ninth, 1922.
12. Praecipe.

The original citation, with plaintiff's acceptance of service thereof, should accompany the transcript.

WM. B. RITCHIE,

County Attorney.

ELLIS, FLETCHER & EVANS and

T. F. TRUMBULL,

Attorneys for Defendants.

The service of the above praecipe and the receipt of a true copy thereof is acknowledged this 10th day of October, 1922.

CAREY & KERR,

THOMAS P. REVELLE,

JOHN A. FRATER,

Attorneys for Plaintiffs.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. Oct. 11, 1922. F. M. Harshberger, Clerk,
By S. E. Leitch, Deputy. [99]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 294—E.

UNITED STATES OF AMERICA and UNITED
STATES SPRUCE PRODUCTION COR-
PORATION, a Corporation,

Plaintiffs,

vs.

CLALLAM COUNTY, WASHINGTON, WILL-
IAM A. NELSON, Sheriff of Clallam
County, Washington, E. S. STEWART,
Treasurer of Clallam County, Washington,
and J. O. MORSE, Assessor of Clallam
County, Washington,

Defendants.

**Certificate of Clerk U. S. District Court to Tran-
script of Record.**

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States
District Court for the Western District of Washing-
ton, do hereby certify and return that the foregoing
pages, numbered from one to 99 inclusive, con-
stitute a full, true, correct and complete copy of so
much of the record, papers, and other proceedings

in the above and foregoing entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the appellant [100] for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fees (Sec. 828, R. S. U. S.), for making record, certificate of return, 262 folios at 15¢.....	\$39.30
Certificate of Clerk to transcript of record, 4 folios at 15¢60
Seal to said certificate20
Certificate of Clerk to original exhibits, 4 folios at 15¢.....	.60
Seal to said certificate.....	.20

I hereby certify that the above cost for preparing and certifying record on appeal, amounting to \$40.90 has been paid to me by solicitors for appellant.

I further certify that I hereto attach and herewith transmit the original citation issued in this cause.

IN WITNESS WHEREOF, I have hereto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 25th day of October, 1922.

[Seal] F. M. HARSHBERGER,
Clerk United States District Court, Western District of Washington. [101]

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 294—E.

UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation,

Appellees,

vs.

CLALLAM COUNTY, WASHINGTON, WILLIAM A. NELSON, Sheriff of Clallam County, Washington, E. S. STEWART, Treasurer of Clallam County, Washington, and J. O. MORSE, Assessor of Clallam County, Washington,

Appellants.

Citation.

The United States of America: To the United States of America, and United States Spruce Production Corporation, a Corporation, GREETING:

You, and each of you, are hereby notified that in a certain suit in the United States District Court

for the Western District of Washington, Northern Division, wherein United States of America and the United States Spruce Production Corporation are plaintiffs, and Clallam County, Washington, William A. Nelson, Sheriff of Clallam County, Washington, E. S. Stewart, Treasurer of Clallam County, Washington, and J. O. Morse, Assessor of Clallam County, Washington, are defendants. An appeal has been allowed the defendants herein to the United States Circuit Court of Appeals, for the Ninth Circuit.

You are hereby cited and admonished to be and appear in said United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, State of California, thirty days after the date of this citation, to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done to the parties in that behalf. [102]

WITNESS the Honorable JEREMIAH NETERER, Judge of the District Court of the United States for the Western District of Washington, Northern Division, this 11th day of October, 1922.

JEREMIAH NETERER,
Judge of the United States District Court for the
Western District of Washington, Northern
Division.

Received a copy of the above and foregoing citation this 11th day of October, 1922.

CAREY & KERR,
THOS. P. REVELLE,
JOHN A. FRATER,
Attorneys for Plaintiff. [103]

Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 11, 1922. F. M. Harshberger, Clerk. By L. E. Leitch, Deputy.

[Endorsed]: No. 3938. United States Circuit Court of Appeals for the Ninth Circuit. Clallam County, Washington, William A. Nelson, Sheriff of Clallam County, Washington, E. S. Stewart, Treasurer of Clallam County, Washington, and J. O. Morse, Assessor of Clallam County, Washington, Appellants, vs. The United States of America and United States Spruce Production Corporation, a Corporation, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed October 27, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.